

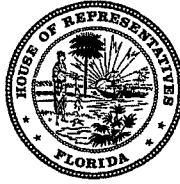
Insurance & Banking Subcommittee

Tuesday, January 24, 2012

2:00 PM

404 HOB

REVISED



The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
Speaker

Bryan Nelson
Chair

AGENDA

January 24, 2012
404 House Office Building
2:00 p.m. - 4:30 p.m.

- I. Introductory Remarks
- II. HB 613 **Financial Institutions** by *Reps. Bernard, Corcoran*
- III. HB 789 **Workers' Compensation** by *Rep. O'Toole*
- IV. CS/HB 823 **Florida Uniform Principal and Income Act** by *Civil Justice Subcommittee and Rep. McBurney*
- V. HB 1127 **Citizens Property Insurance Corporation** by *Rep. Albritton*
- VI. PCS for HB 1101 **Insurance**
- VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Financial Institutions
SPONSOR(S): Bernard and others
TIED BILLS: IDEN./SIM. BILLS: SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Barnum <i>OB</i>	Cooper <i>DC</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law. Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts or payable-through accounts for a foreign financial institution that is found to knowingly engage in specific sanctioned activities. Violators are subject to civil penalties up to \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and 20 years in prison.

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.
- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity.

Under the current process, the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN) sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control and FinCEN regulations, and the promulgated federal Iranian sanctions. The types of activities targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules. Furthermore, each certifies that it is not knowingly in violation of federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed \$100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

There is no fiscal impact on state or local governments, nor economic impact on the private sector.

The bill provides for an effective date of upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0613.INBS.DOCX

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions. The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria, with Iran being so designated on January 19, 1984.¹

In 1987, President Reagan imposed an import embargo on goods and services of Iranian origin.² In 1995, President Clinton imposed prohibitions on U.S. involvement with any petroleum development in Iran,³ and in 1997 prohibited most trade and investment activities by U.S. Citizens.⁴

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law.⁵ Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts⁶ or payable-through accounts⁷ for a foreign financial institution that is found to knowingly engage in the following sanctioned activities:

- Facilitating the efforts of the Government of Iran (GOI) to acquire or develop weapons of mass destruction (WMD) or delivery systems for WMD or to provide support for terrorist organizations or acts of international terrorism.
- Facilitating the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other Security Council Resolution that imposes sanctions with respect to Iran.
- Engaging in money laundering, or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution, to carry out either of the above.
- Facilitating a significant transaction or transactions or providing significant financial services for Iran's Islamic Revolutionary Guard Corps (IRGC) or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (IEEPA) or a financial institution whose property or interests in property are blocked pursuant to IEEPA in connection with the GOI's proliferation of WMD or support for international terrorism.

Violators are subject to civil penalties up to \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and 20 years in prison.⁸

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.

¹ <http://www.state.gov/g/ct/c14151.htm> (Last visited on January 22, 2012).

² Executive Order 12613, October 29, 1987.

³ Executive Order 12957, March 16, 1995.

⁴ Executive Order 13059, August 19, 1997.

⁵ Pub. L. 111-195.

⁶ An account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transaction related to such foreign bank.

⁷ A correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usually in connection with the business of banking in the United States.

⁸ <http://www.treasury.gov/press-center/press-releases/Pages/tg829.aspx> (Last visited on January 22, 2012).

- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity.^{9,10}

The US Department of Treasury's Financial Crimes Enforcement Network's (FinCEN) mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. Under the current process, FinCEN sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.¹¹ The request is specific regarding the data being requested, and a "negative report" is required of U.S. banks which receive a request but do not maintain correspondent accounts with the subject foreign bank.

The names of foreign financial institutions that are found by the Secretary of the Treasury to knowingly engage in sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the Federal Register and listed in Appendix A to the Iranian Financial Sanctions Regulations found at: <http://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>. These listings are part of the List of Specially Designated Nationals and Blocked Persons, which is updated as names are added or removed. One can subscribe to receive e-mail updates when the information changes.¹²

Current Situation:

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) regulations, and the promulgated federal Iranian sanctions. There exist information sharing agreements between state and federal banking regulators and both OFAC and FinCEN.

The bank examination processes, by both state and federal examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with federal regulatory requirements and sanctions. For Florida-chartered banks, the types of activities being targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.¹³

Effect of the Bill:

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules established by the Financial Services Commission. Furthermore, each certifies that it is not knowingly in violation of

⁹ Bank is defined in 31 CFR 1010.100(d) to include:

- A commercial bank or trust company organized under the laws of any State or of the United States.
- A private bank.
- A savings and loan association or a building and loan association organized under the laws of any State or of the United States.
- An insured institution as defined in section 401 of the National Housing Act.
- A savings bank, industrial bank or other thrift institution.
- A credit union organized under the law of any State or of the United States.
- Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State.

¹⁰ Due diligence policies, procedures, and controls are specified in section 5318(i) of Title 31, United States Code.

¹¹ "Department of the Treasury, Financial Crimes Enforcement Network, 31 CFR Part 1060, Comprehensive Iran Sanctions, Accountability, and Divestment Reporting Requirements, Final rule," 76 Federal Register 196 (11 October 2011), 62621.

¹² <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (Last visited on January 22, 2012).

¹³ s. 655.50, F.S.

federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed \$100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation (OFR) to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

B. SECTION DIRECTORY:

Section 1: Creates new law relating to financial institutions; transactions relating to Iran or terrorism.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. According to a Florida Bankers Association representative, the bill will not have a financial impact on its members.¹⁴

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

¹⁴ Conversation with Insurance & Banking Subcommittee staff on January 17, 2012.

2. Other:

The bill adopts Federal laws and regulations that change frequently. Any future changes to the federal requirements after the bill were to become law would have to be readdressed by the legislature.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission will be required to promulgate rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in order to comply with existing federal requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Federally-chartered financial institutions and financial institutions chartered by a state other than Florida will not be subject to compliance with the bill, the new rules, or the certification requirement, with its accompanying potential civil penalty for non-compliance.
- As noted by the OFR,¹⁵ an administrative penalty or fine, rather than a civil penalty for non-compliance with certification submission, would be more consistent with other actions taken by the OFR.
- Because the OFR, which regulates financial institutions, will be receiving the compliance certifications, and will be producing and delivering the annual report, the posting of the report on the OFR's website may be more appropriate.¹⁶
- Should the federal government modify certain language or requirements in its rules and regulations, a change to the Florida Statutes and Florida Administrative Code may be necessary. Otherwise, as applied to Florida-chartered financial institutions, Florida law may be inconsistent with, or more restrictive than, federal requirements.
- Lines 94 and 103 specify that the OFR shall adopt rules. The Financial Services Commission is the only entity under current law authorized to adopt rules for the OFR. An amendment has been drafted to correct this scrivener's error.
- On line 113, the reference should be to subsection (3), rather than (2). An amendment has been drafted to correct this scrivener's error.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁵ Office of Financial Regulation HB 613 Bill Analysis dated December 5, 2011, on file with the Insurance & Banking Subcommittee.

¹⁶ *Id.*

29 effective date.

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31 WHEREAS, the United States Congress passed, and President
32 Obama signed into law, the Comprehensive Iran Sanctions,
33 Accountability, and Divestment Act of 2010, and

34 WHEREAS, the Comprehensive Iran Sanctions, Accountability,
35 and Divestment Act of 2010 prohibits or strictly limits any
36 foreign financial institution's ability to open or maintain a
37 correspondent account or a payable-through account with American
38 financial institutions if the United States Secretary of the
39 Treasury determines that the foreign financial institution
40 knowingly engages in certain activities facilitating the
41 development of weapons of mass destruction by the Government of
42 Iran, provides support for certain foreign terrorist
43 organizations, or participates in other related activities, and

44 WHEREAS, the Comprehensive Iran Sanctions, Accountability,
45 and Divestment Act of 2010 imposes civil and criminal penalties
46 against financial institutions based in the United States which
47 know or should know that they are maintaining a correspondent
48 account or a payable-through account with a foreign financial
49 institution that engages in prohibited activities, and

50 WHEREAS, it is a sensible fiduciary responsibility of
51 financial institutions chartered in the State of Florida to know
52 the activities of foreign financial institutions with which they
53 maintain correspondent or payable-through accounts, NOW,

54 THEREFORE,

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56 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Financial institutions; transactions relating to Iran or terrorism.—

(1) As used in this section, the term:

(a) "Correspondent account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(b) "Financial institution" has the same meaning as defined in s. 655.005(1)(i), Florida Statutes.

(c) "Payable-through account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(2) A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

(b) Provides support for an organization designated by the United States as a foreign terrorist organization;

(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;

(d) Engages in money laundering to carry out any activity listed in this subsection;

(e) Facilitates efforts by the Central Bank of Iran or any

85 other Iranian financial institution to carry out an activity
 86 listed in this subsection; or

87 (f) Facilitates a significant transaction or provides
 88 significant financial services for Iran's Revolutionary Guard
 89 Corps or its agents or affiliates, or any financial institution,
 90 whose property or interests in property are blocked pursuant to
 91 federal law in connection with Iran's proliferation of weapons
 92 of mass destruction, or delivery systems for those weapons, or
 93 Iran's support for international terrorism.

94 (3) By July 1, 2012, the Office of Financial Regulation
 95 shall adopt rules establishing minimum standards for due
 96 diligence policies, procedures, and controls required by this
 97 section.

98 (4) By January 1, 2013, and each January 1 thereafter,
 99 each financial institution chartered in this state must certify
 100 to the Office of Financial Regulation that the financial
 101 institution has adopted and substantially complies with its due
 102 diligence policies, procedures, and controls required by this
 103 section and the rules of the Office of Financial Regulation, and
 104 that to the best knowledge of the financial institution, the
 105 financial institution does not maintain a correspondent account
 106 or a payable-through account with a foreign financial
 107 institution that knowingly engages in any act described in
 108 subsection (2).

109 (5) By January 31, 2013, and each January 31 thereafter,
 110 the Office of Financial Regulation must submit a report to the
 111 Governor, the President of the Senate, and the Speaker of the
 112 House of Representatives which contains a copy of the rules

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113 required under subsection (2) and the status of the
114 certifications of compliance received from the financial
115 institutions chartered in this state.

116 (6) The Office of the Chief Financial Officer shall make
117 its annual compliance report under this section available on its
118 website.

119 (7) The Office of Financial Regulation may impose a civil
120 penalty, not to exceed \$100,000 per occurrence, against a
121 financial institution that fails to make the annual
122 certification required under subsection (4).

123 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Workers' Compensation
SPONSOR(S): O'Toole
TIED BILLS: IDEN./SIM. BILLS: SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly <i>RJR</i>	Cooper <i>MC</i>
2) Government Operations Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 440, F.S., is Florida's Workers' Compensation Law. If an employer fails to comply with workers' compensation coverage requirements (does not secure the payment of workers' compensation), the Department of Financial Services (DFS) is required to issue a Stop-Work Order (SWO) within 72 hours of learning of the non-compliance. SWOs require the employer to cease all business operations. Additionally, such employers are assessed penalties for non-compliance equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or \$1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide 3 years of payroll records. SWOs remain in effect until released by the DFS upon finding that the employer has come into compliance with coverage requirements and has paid any penalty assessed. The DFS informs that employers often are unable to quickly provide all records required to calculate the penalty.

The bill reduces the look-back period for calculating the penalty for failure to comply with workers' compensation coverage requirements from 3 years to 1 year, thus requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the penalty multiplier from 1.5 to 2 times the amount of payroll that was avoided in the preceding year.

The DFS informs that the 1-year look-back period will streamline the penalty calculation process, enabling employers to obtain a determination of their penalty amount more quickly, and to pay the amount due to obtain a release from the SWO.

The decreased reporting of payroll records provided by the bill will likely result in a small, but indeterminate savings in DFS staff hours in reviewing such records and calculating penalties.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees. Construction industry employers with 1 or more employees are required to have workers' compensation insurance.¹ Non-construction industry employers with 4 or more employees are required to have workers' compensation insurance. Agricultural employers with more than 5 regular employees and 12 or more seasonal employees who work more than 30 days are required to have workers' compensation insurance.²

Failure to Comply with Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of knowledge of non-compliance. SWOs require the employer to cease business operations and remain in effect until the DFS issues an Order Releasing the Stop-Work Order. Additionally, employers are assessed penalties equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance, during the preceding 3-year period or \$1,000, whichever is greater. SWOs are issued for the following violations: failure to obtain workers' compensation insurance; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records in a timely manner. For fiscal year 2010-2011, 2,174 SWOs were issued.³

Effect of the Bill

The bill amends the statutory formula for calculating the penalty for employers that fail to comply with workers' compensation coverage requirements. The bill reduces the look-back period from 3 years to 1 year; requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the amount of the penalty from 1.5 to 2 times the amount of payroll that was avoided in the preceding year.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.107, F.S., to revise a penalty calculation formula.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that the penalty calculation process is streamlined by the 1-year look-back period, DFS will realize a reduction in costs associated with calculating penalties for non-compliance. It is unknown what effect the decreased penalty period together with the increased penalty multiplier will have on penalty amounts.

¹ Section 440.02(17) (b)2, F.S.

² Section 440.02(17)(c)2, F.S.

³ "2011 Division of Workers' Compensation Annual Report." Available at: <http://www.myfloridacfo.com/sitePages/agency/sections/WorkersComp.aspx> (Last accessed January 20, 2012).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The extent to which the amended penalty calculation formula will change the amount for penalties assessed is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring employers to whom stop-work orders have been issued to supply 1 year of payroll records (rather than 3 years) for penalty calculation purposes decreases the regulatory burden on such employers and provides the opportunity to more promptly obtain a release from the stop-work order. Also, with the decreased look-back period, the amount of some fines assessed may decrease even though the penalty multiplier has been increased. In other cases, the increased penalty multiplier will increase the penalty, even though the look-back period has been shortened.

D. FISCAL COMMENTS:

The bill will allow employers the opportunity to be released from a stop-work order more expeditiously, thus allowing them to resume business operations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

DFS informs that several rule sections will need to be amended to align themselves with the new penalty calculation methodology.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to workers' compensation; amending s.
 3 440.107, F.S.; revising penalties applicable to
 4 employers who fail to secure the payment of workers'
 5 compensation as required; providing an effective date.

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 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (d) of subsection (7) of section
 10 440.107, Florida Statutes, is amended to read:

11 440.107 Department powers to enforce employer compliance
 12 with coverage requirements.—

13 (7)

14 (d)1. In addition to any penalty, stop-work order, or
 15 injunction, the department shall assess against any employer who
 16 has failed to secure the payment of compensation as required by
 17 this chapter a penalty equal to 2 ~~1.5~~ times the amount the
 18 employer would have paid in premium when applying approved
 19 manual rates to the employer's payroll during periods for which
 20 it failed to secure the payment of workers' compensation
 21 required by this chapter within the preceding 1-year ~~3-year~~
 22 period or \$1,000, whichever is greater.

23 2. Any subsequent violation within 5 years after the most
 24 recent violation shall, in addition to the penalties set forth
 25 in this subsection, be deemed a knowing act within the meaning
 26 of s. 440.105.

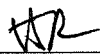

27 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Florida Uniform Principal and Income Act

SPONSOR(S): Civil Justice Subcommittee, McBurney

TIED BILLS: IDEN./SIM. BILLS: SB 978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee		Read 	Cooper 
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law governs the creation of wills and trusts and the administration of such instruments. Drafters of wills and trusts have broad authority to create parameters for administering the instrument within the documents, but the Florida statutes serve to provide default guidelines where the instrument is silent.

The Florida Uniform Principal and Income Act is modeled after the Uniform Principal and Income Act as drafted by the National Conference of Commissioners on Uniform State Laws. The Florida act is similar to the model act.

Practitioners have identified several issues with the Act, including some misuse of the terms "fiduciary" and "trustee". Trustees are always fiduciaries, but fiduciaries are not always trustees. In some cases, the word "trustee" was used in a context where the provision should apply to all fiduciaries.

Fluctuations in the stock market make it difficult to evaluate assets and can lead to a wide variance in distributions from year to year. This bill implements a "smoothing rule" where fiduciaries calculate the average fair market value of the current year assets and the two preceding years' assets. The bill also provides clarification for allocating assets between principal and income, including providing a new definition for "carrying value," which is the fair market value at the time the assets are received by the fiduciary.

The bill also modifies the default guidelines for several other aspects, including unitrusts, distribution of income, the partial liquidation rule, marital deductions, liquidating assets, income taxes, and property improvements.

This bill does not appear to have a fiscal impact on state or local governments.

This bill takes effect on January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2002, a modified version of the Uniform Principal and Income Act, as developed by the National Commissioners on Uniform State Laws in 1997, was enacted.¹ The Act provides procedures for trustees administering an estate in differentiating principal from income and ensuring that the intention of the trust creator is the guiding principal for trustees.² The Act provides default rules to trustees and fiduciaries where the will or trust instrument is silent.

The Act defines principal as property held in trust for distribution to a remainder beneficiary when the trust terminates.³ Income is money or property that a fiduciary receives as current return from a principal asset.⁴

Effects of the Bill

Trustee and Fiduciary

Trustees and fiduciaries both have the responsibility to act primarily for another's benefit.⁵ However, a trustee is the owner of the legal title to the property of the trust.⁶ Current law defines a trustee to include an original, additional, or successor trustee, whether or not appointed or confirmed by a court.⁷ A fiduciary is a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, or a person performing substantially the same function.⁸ A trustee is always a fiduciary, but a fiduciary is not always a trustee.

The bill changes "trustee" to "fiduciary" throughout wherever the word "trustee" should also apply to fiduciaries that are not specifically designated as trustees. Furthermore, the bill amends s. 738.103, F.S., to provide that the chapter pertains to the administration of trusts administered in this state or under its law, and to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Carrying Value

The bill amends s. 738.102, F.S., to provide a new standard for valuing assets. The term "carrying value" is defined as the fair market value at the time the assets are received by the fiduciary, and a change in fiduciaries allows the majority of continuing fiduciaries to elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. The bill amends s. 738.202, F.S. and s. 738.602(2), F.S., to apply the carrying value, which will simplify administration of trusts by not requiring the fiduciary to revalue the assets on each distribution date unless there is a

¹ Chapter 2002-42, L.O.F.

² The National Conference of Commissioners on Uniform State Laws, [http://www.nccusl.org/Narrative.aspx?title=Why States Should Adopt UPIA](http://www.nccusl.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UPIA) (last checked Jan. 4, 2012).

³ Section 738.102(10), F.S.

⁴ Section 738.102(4), F.S.

⁵ See, e.g., *Black's Law Dictionary*, which defines a fiduciary as ". . . a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." 5th Ed., at 563.

⁶ See, e.g., *Black's Law Dictionary*, which defines a trustee as a "Person holding property in trust. The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another called the cestui que trust. Person who holds title to res and administers it for others' benefit." 5th Ed., at 1357.

⁷ Section 738.102(13), F.S.

⁸ Section 738.102(3), F.S.

non pro-rata distribution to one or more beneficiaries, in which case the bill provides guidelines on how to make the distribution.

Unitrusts

A "unitrust" is a "trust from which a fixed percentage of the net fair market value of the trust's assets, valued annually, is paid each year to the beneficiary."⁹ The value of assets in a unitrust are calculated by the "fair market value" method, which is the fair market value of assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.¹⁰

The bill provides new rules for valuing assets for unitrusts. The bill amends s. 738.1041(1)(a), F.S., to add a definition for "average fair market value" which includes what is commonly referred to as the "smoothing rule." This rule is intended to reduce the large differences in amounts distributable to a beneficiary from year to year depending on large market fluctuations by using the average fair market value over the past three years to value assets. The bill then implements the smoothing rule in the definition of "unitrust amount" in s. 738.1041(1)(f), F.S.

Determination and Distribution of Net Income

Current law requires a fiduciary, in certain situations, to distribute to the beneficiary who receives a pecuniary amount outright the interest provided by will, the terms of the trust, or applicable law. However, this was model act language and there are no situations where this law applies in Florida. Current law also contains language from the model act that implies that there is a statutory right to income on an outright pecuniary device in Florida, where such a right does not exist.¹¹

The bill amends s. 738.201(3), F.S., to remove unnecessary language referencing "applicable law" where there is no applicable law and to remove model act language pertaining to a statutory right to income on an outright pecuniary device, which is not a right in Florida.

Character of Receipts

Current law provides a default provision for determining whether assets should be allocated to principal or income: payments in excess of 20% of the entities' assets are presumed to be liquidating distributions which are allocated to principal (the 20% partial liquidation rule). However, certain entities pay large dividends that may exceed this limit despite not being liquidating assets.¹²

The bill amends s. 738.401, F.S., to retain the 20% partial liquidation rule for non-publicly-traded entities, but only after the trust or estate has received a cumulative minimum return of 3% annually. The bill provides a framework for allocating dividends and other stock payments which exceed 10% of fair market value of the trust's interest in that entity, and provides rules for different types of entities, such as publicly-traded companies, partnerships, subchapter S corporations, and other entities.

Marital Trusts and Deductions

Current law contains one method of computing income from assets held in marital trusts and another more complex method of computing the allocation of principal and income for non-marital trusts.¹³

The bill amends s. 738.602(4), F.S., to simplify the method for computing income held in non-marital trusts. The bill also amends s. 738.602(5), F.S., to ensure that the estate or gift tax marital deduction applies to not only federal tax laws, but tax laws of other states where the trust is administered in

⁹ Black's Law Dictionary, 5th Ed., at 1376.

¹⁰ Section 738.1041(1)(b), F.S.

¹¹ Section 738.201, F.S.

¹² Section 738.401, F.S.

¹³ Compare s. 738.602(4) and (5), F.S.

Florida. The bill also amends s. 738.606(1), F.S., to clarify that the marital deduction in that section can apply to the IRS or a comparable law of any state.

Liquidating Asset

Assets in a trust that are expected to produce receipts for a limited period of time are allocated such that 10% of the payments go to income and the rest is applied to principal. The Internal Revenue Service (IRS) recently ruled that the safe harbor was between 3 % and 5% to income, putting Florida trusts at risk for additional tax liabilities.

The bill amends s. 738.603(2), F.S., to change the percentage of limited-duration assets applied to income from 10% to 5% to comply with an IRS ruling that 5% is the maximum safe harbor for such an allocation.

Disbursements from Income

Current law requires fiduciaries to make certain disbursements from income, providing that the disbursements are not income from property used to discharge liabilities or disbursements paying from principal which were incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest.¹⁴

The bill amends s. 738.701, F.S., to add an additional exclusion from disbursements from income, payments from income or principal including, at the fiduciary's discretion, attorney, accountant, or fiduciary fees, court costs, other administration expenses, and interest on death taxes.

Income Taxes

Current law provides guidelines for paying income taxes out of a trust, including guidelines specifically for paying taxes on an entity's taxable income. Current law also requires payment from income to the extent receipts from the entity are allocated to income and from principal to the extent that receipts from the entity are allocated to principal and the trust's share of the entity's taxable income exceeds the total of such receipts. Receipts allocated to principal or income are reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.¹⁵

The bill amends s. 738.705, F.S., to provide new guidelines for paying income taxes out of a trust. The bill provides that an income tax required to be paid on the trust or estate's share of an entity's taxable income is to be paid proportionally from income to the extent the receipts from the entity are allocated to income, from principal to the extent the receipts from the entity are allocated to principal, and from principal to the extent that the income taxes payable by the trust or estate exceed the total distributions from the entity. Then, the fiduciary is to adjust income or principal receipts to the extent that the trust or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary, with additional guidelines to provide clarity to the fiduciary.

Improvements

Under the common law, when a tenant of a property had a life estate, the tenant was generally responsible for the maintenance of the property while the holder of the remainder interest, or the remainderman, was responsible for capital improvements. The original adoption of the act attempted to codify the common law rule, but the wording of the act could lead to different conclusion for the apportionment of expenses because the act used terms common in trust law, which did not exist at common law.

The bill amends s. 738.801, F.S., to provide definitions and additional guidelines for apportioning expenses between the life tenant and the remainderman. Life tenants are responsible for paying

¹⁴ Section 738.701, F.S.

¹⁵ Section 738.705, F.S.

ordinary expenses and maintenance, recurring insurance premiums, and other expenses which are the result of the property's use by the tenant. The remainderman is responsible for paying mortgage debt not allocated to the tenant, expenses due to title other than the tenant's estate, environmental expenses, and extraordinary repairs. If either party incurs an expense for personal benefit without the consent of the other, that party bears the expense in full. For improvements that add value to the property forming part of the principal, the expense is split between the tenant and the remainderman, with the tenant paying to the extent that the improvement increases the value of the tenant's estate.

Effective Date

The bill provides an effective date of January 1, 2013, in order to provide practitioners enough lead time to prepare for the changes in the law.

B. SECTION DIRECTORY:

Section 1 amends s. 738.102, F.S., providing an additional definition.

Section 2 amends s. 738.103, F.S., relating to fiduciary duties.

Section 3 amends s. 738.104, F.S., relating to the trustee's power to adjust between principal and income.

Section 4 amends s. 738.1041, F.S., relating to total return unitrusts.

Section 5 amends s. 738.105, F.S., relating to judicial control of discretionary powers.

Section 6 amends s. 738.201, F.S., relating to determination and distribution of net income.

Section 7 amends s. 738.202, F.S., relating to distribution to residuary and remainder beneficiaries.

Section 8 amends s. 738.301, F.S., relating to right to income.

Section 9 amends s. 738.302, F.S., relating to apportionment of receipts and disbursements.

Section 10 amends s. 738.303, F.S., relating to apportionment when income interest ends.

Section 11 amends s. 738.401, F.S., relating to the character of receipts.

Section 12 amends s. 738.402, F.S., relating to distribution from trust or estate.

Section 13 amends s. 738.403, F.S., relating to business and other activities conducted by fiduciaries.

Section 14 amends s. 738.501, F.S., relating to principal receipts.

Section 15 amends s. 738.502, F.S., relating to rental property.

Section 16 amends s. 738.503, F.S., relating to the obligation to pay money.

Section 17 amends s. 738.504, F.S., relating to insurance policies and similar contracts.

Section 18 amends s. 738.601, F.S., relating to insubstantial allocations.

Section 19 amends s. 738.602, F.S., relating to payments from deferred compensation plans, annuities, and retirement plans or accounts.

Section 20 amends s. 738.603, F.S., relating to liquidating assets.

Section 21 amends s. 738.604, F.S., relating to minerals, water, and other natural resources.

Section 22 amends s. 738.605, F.S., relating to timber.

Section 23 amends s. 738.606, F.S., relating to property not productive of income.

Section 24 amends s. 738.607, F.S., relating to derivatives and options.

Section 25 amends s. 738.608, F.S., relating to asset-backed securities.

Section 26 amends s. 738.701, F.S., relating to disbursements from income.

Section 27 amends s. 738.702, F.S., relating to disbursements from principal.

Section 28 amends s. 738.703, F.S., relating to transfers from income to principal for depreciation.

Section 29 amends s. 738.704, F.S., relating to transfers from income to reimburse principal.

Section 30 amends s. 738.705, F.S., relating to income taxes.

Section 31 amends s. 738.801, F.S., relating to apportionment of expenses for improvements.

Section 32 provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action require the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee approved a proposed committee substitute which made numerous minor grammatical and stylistic changes throughout. It also changes "trustee" to "fiduciary", as appropriate. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

29 the term "fiduciary" for "trustee" to clarify that
 30 provisions apply to all fiduciaries; revising how
 31 distributions from entities are allocated between
 32 income and principal; amending ss. 738.402, 738.403,
 33 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
 34 substituting the term "fiduciary" for "trustee" to
 35 clarify that provisions apply to all fiduciaries;
 36 amending s. 738.602, F.S.; substituting the term
 37 "fiduciary" for "trustee" to clarify that provisions
 38 apply to all fiduciaries; revising provisions relating
 39 to allocations to trusts; amending s. 738.603, F.S.;
 40 substituting the term "fiduciary" for "trustee" to
 41 clarify that provisions apply to all fiduciaries;
 42 revising provisions relating to the allocation between
 43 income and principal when liquidating assets; amending
 44 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
 45 738.701, 738.702, 738.703, and 738.704, F.S.;
 46 substituting the term "fiduciary" for "trustee" to
 47 clarify that provisions apply to all fiduciaries;
 48 amending s. 738.705, F.S.; substituting the term
 49 "fiduciary" for "trustee" to clarify that provisions
 50 apply to all fiduciaries; revising the method for
 51 allocating income taxes between income and principal;
 52 amending s. 738.801, F.S.; clarifying the
 53 apportionment of expenses between tenants and
 54 remaindermen; providing an effective date.

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 56 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Present subsections (3) through (13) of section 738.102, Florida Statutes, are renumbered as subsections (4) through (14), respectively, and a new subsection (3) is added to that section, to read:

738.102 Definitions.—As used in this chapter, the term:
(3) "Carrying value" means the fair market value at the time the assets are received by the fiduciary. For the estates of decedents and trusts described in s. 733.707(3), after the grantor's death, the assets are considered received as of the date of death. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. If such election is made, it must be reflected on the first accounting filed after the election. For assets acquired during the administration of the estate or trust, the carrying value is equal to the acquisition costs of the asset.

Section 2. Subsection (3) is added to section 738.103, Florida Statutes, to read:

738.103 Fiduciary duties; general principles.—
(3) Except as provided in s. 738.1041(9), this chapter pertains to the administration of a trust and is applicable to any trust that is administered in this state or under its law. This chapter also applies to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Section 3. Subsections (5) and (11) of section 738.104,

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85 Florida Statutes, are amended to read:

86 738.104 Trustee's power to adjust.-

87 (5) (a) ~~A trustee may release the entire power to adjust~~
 88 ~~conferred by subsection (1) if the trustee desires to convert an~~
 89 ~~income trust to a total return unitrust pursuant to s. 738.1041.~~

90 ~~(b)~~ A trustee may release the entire power to adjust
 91 conferred by subsection (1) or may release only the power to
 92 adjust from income to principal or the power to adjust from
 93 principal to income if the trustee is uncertain about whether
 94 possessing or exercising the power will cause a result described
 95 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
 96 determines that possessing or exercising the power will or may
 97 deprive the trust of a tax benefit or impose a tax burden not
 98 described in subsection (3).

99 ~~(b)-(e)~~ A release under this subsection may be permanent or
 100 for a specified period, including a period measured by the life
 101 of an individual. ~~Notwithstanding anything contrary to this~~
 102 ~~subsection, a release of the power to adjust pursuant to~~
 103 ~~paragraph (a) shall remain effective only for as long as the~~
 104 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

105 ~~(11)~~ This section shall be construed as pertaining to the
 106 administration of a trust and is applicable to any trust that is
 107 administered either in this state or under Florida law.

108 Section 4. Section 738.1041, Florida Statutes, is amended
 109 to read:

110 738.1041 Total return unitrust.-

111 (1) For purposes of this section, the term:

112 (a) "Average fair market value" means the average of the

113 fair market values of assets held by the trust at the beginning
 114 of the current and each of the 2 preceding years, or for the
 115 entire term of the trust if there are less than 2 preceding
 116 years, and adjusted as follows:

117 1. If assets have been added to the trust during the years
 118 used to determine the average, the amount of each addition is
 119 added to all years in which such addition was not included.

120 2. If assets have been distributed from the trust during
 121 the years used to determine the average, other than in
 122 satisfaction of the unitrust amount, the amount of each
 123 distribution is subtracted from all years in which such
 124 distribution was not included.

125 (b)-(a) "Disinterested person" means a person who is not a
 126 "related or subordinate party" ~~as defined in s. 672(c) of the~~
 127 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~
 128 ~~any successor provision thereof,~~ with respect to the person ~~then~~
 129 acting as trustee of the trust and excludes the grantor and any
 130 interested trustee.

131 (c)-(b) "Fair market value" means the fair market value of
 132 the assets held by the trust as otherwise determined under this
 133 chapter, reduced by all known noncontingent liabilities.

134 (d)-(e) "Income trust" means a trust, created by ~~either~~ an
 135 inter vivos or a testamentary instrument, which directs or
 136 permits the trustee to distribute the net income of the trust to
 137 one or more persons, ~~either~~ in fixed proportions or in amounts
 138 or proportions determined by the trustee and regardless of
 139 whether the trust directs or permits the trustee to distribute
 140 the principal of the trust to one or more such persons.

141 (e) ~~(d)~~ "Interested distributee" means a person to whom
 142 distributions of income or principal can currently be made and
 143 who has the power to remove the existing trustee and designate
 144 as successor a person who may be a "related or subordinate
 145 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
 146 ~~672(e)~~, with respect to such distributee.

147 (f) ~~(e)~~ "Interested trustee" means an individual trustee to
 148 whom the net income or principal of the trust can currently be
 149 distributed or would be distributed if the trust were ~~then~~ to
 150 terminate and be distributed, any trustee whom an interested
 151 distributee has the power to remove and replace with a related
 152 or subordinate party ~~as defined in paragraph (d)~~, or an
 153 individual trustee whose legal obligation to support a
 154 beneficiary may be satisfied by distributions of income and
 155 principal of the trust.

156 (g) "Related or subordinate party" has the same meaning as
 157 provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or
 158 any successor provision thereof.

159 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
 160 multiplying the average fair market value of the assets as
 161 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage
 162 calculated under paragraph (2)(b).

163 (2) A trustee may, without court approval, convert an
 164 income trust to a total return unitrust, reconvert a total
 165 return unitrust to an income trust, or change the percentage
 166 used to calculate the unitrust amount or the method used to
 167 determine the fair market value of the trust if:

168 (a) The trustee adopts a written statement regarding trust

169 | distributions which ~~that~~ provides:

170 | 1. In the case of a trust being administered as an income
 171 | trust, that future distributions from the trust will be unitrust
 172 | amounts rather than net income, and indicates the manner in
 173 | which the unitrust amount will be calculated and the method in
 174 | which the fair market value of the trust will be determined.

175 | 2. In the case of a trust being administered as a total
 176 | return unitrust, that:

177 | a. Future distributions from the trust will be net income
 178 | rather than unitrust amounts; or

179 | b. The percentage used to calculate the unitrust amount or
 180 | the method used to determine the fair market value of the trust
 181 | will be changed, and indicates the manner in which the new
 182 | unitrust amount will be calculated and the method in which the
 183 | new fair market value of the trust will be determined;

184 | (b) The trustee determines the terms of the unitrust under
 185 | one of the following methods:

186 | 1. A disinterested trustee determines, or if there is no
 187 | trustee other than an interested trustee, the interested trustee
 188 | appoints a disinterested person who, in its sole discretion but
 189 | acting in a fiduciary capacity, determines for the interested
 190 | trustee:

191 | a. The percentage to be used to calculate the unitrust
 192 | amount, provided the percentage used is not greater than 5
 193 | percent nor less than 3 percent;

194 | b. The method to be used in determining the fair market
 195 | value of the trust; and

196 | c. Which assets, if any, are to be excluded in determining

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197 the unitrust amount; or

198 2. The interested trustee or disinterested trustee
199 administers the trust such that:

200 a. The percentage used to calculate the unitrust amount is
201 50 percent of the ~~applicable federal~~ rate as defined in the
202 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
203 month the conversion under this section becomes effective and
204 for each January thereafter; however, if the percentage
205 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
206 ~~be~~ 5 percent and if the percentage calculated is less than 3
207 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

208 b. The fair market value of the trust shall be determined
209 at least annually on an asset-by-asset basis, reasonably and in
210 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
211 except the following property shall not be included in
212 determining the value of the trust:

213 (I) Any residential property or any tangible personal
214 property that, as of the first business day of the current
215 valuation year, one or more current beneficiaries of the trust
216 have or have had the right to occupy, or have or have had the
217 right to possess or control, ~~(other than in his or her capacity~~
218 ~~as trustee of the trust),~~ and instead the right of occupancy or
219 the right to possession and control is ~~shall be deemed to be~~ the
220 unitrust amount with respect to such property; however, the
221 unitrust amount must ~~shall~~ be adjusted to take into account
222 partial distributions from or receipt into the trust of such
223 property during the valuation year;~~;~~

224 (II) Any asset specifically given to a beneficiary and the

225 return on investment on such property, which return on
 226 investment shall be distributable to the such beneficiary; ~~or-~~

227 (III) Any asset ~~while~~ held in a decedent's ~~testator's~~
 228 estate;

229 (c) The trustee sends written notice of its intention to
 230 take such action, along with copies of the such written
 231 statement regarding trust distributions and this section, and,
 232 if applicable, the determinations of ~~either~~ the trustee or the
 233 disinterested person to:

- 234 1. The grantor of the trust, if living.
- 235 2. All living persons who are currently receiving or
 236 eligible to receive distributions of income from ~~of~~ the trust.
- 237 3. All living persons who would receive distributions of
 238 principal of the trust if the trust were to terminate at the
 239 time of ~~the giving of~~ such notice ~~(without regard to the~~
 240 ~~exercise of any power of appointment,)~~ or, if the trust does not
 241 provide for its termination, all living persons who would
 242 receive or be eligible to receive distributions of income or
 243 principal of the trust if the persons identified in subparagraph
 244 2. were deceased.
- 245 4. All persons acting as advisers or protectors of the
 246 trust.

247
 248 Notice under this paragraph shall be served informally~~r~~ in the
 249 manner provided in the Florida Rules of Civil Procedure relating
 250 to service of pleadings subsequent to the initial pleading.
 251 Notice may be served on a legal representative or natural
 252 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or

253 approval of any court;

254 (d) At least one person receiving notice under each of
 255 subparagraphs (c)2. and 3. is legally competent; and

256 (e) No person receiving such notice objects, by written
 257 instrument delivered to the trustee, to the proposed action of
 258 the trustee or the determinations of the disinterested person
 259 within 60 days after service of such notice. An objection ~~under~~
 260 ~~this section~~ may be executed by a legal representative or
 261 natural guardian of a person without ~~the~~ filing ~~of~~ any
 262 proceeding or approval of any court.

263 (3) If a trustee desires to convert an income trust to a
 264 total return unitrust, reconvert a total return unitrust to an
 265 income trust, or change the percentage used to calculate the
 266 unitrust amount or the method used to determine a fair market
 267 value of the trust but does not have the ability to or elects
 268 not to do it under subsection (2), the trustee may petition the
 269 circuit court for such order as the trustee deems appropriate.
 270 In that event, the court, in its own discretion or on the
 271 petition of such trustee or any person having an income or
 272 remainder interest in the trust, may appoint a disinterested
 273 person who, acting in a fiduciary capacity, shall present such
 274 information to the court as is ~~shall be~~ necessary for the court
 275 to make a determination hereunder.

276 ~~(4) All determinations made pursuant to sub-subparagraph~~
 277 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
 278 ~~faith. Such determination shall be conclusively presumed to have~~
 279 ~~been made reasonably and in good faith unless proven otherwise~~
 280 ~~in a proceeding commenced by or on behalf of a person interested~~

281 ~~in the trust within the time provided in s. 736.1008. The burden~~
 282 ~~will be on the objecting interested party to prove that the~~
 283 ~~determinations were not made reasonably and in good faith.~~

284 (4)~~(5)~~ Following the conversion of an income trust to a
 285 total return unitrust, the trustee:

286 (a) Shall treat the unitrust amount as if it were net
 287 income of the trust for purposes of determining the amount
 288 available, from time to time, for distribution from the trust.

289 (b) May allocate to trust income for each taxable year of
 290 the trust, or portion thereof:

291 1. Net short-term capital gain described in the Internal
 292 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
 293 thereof, but only to the extent that the amount so allocated
 294 together with all other amounts allocated to trust income, as
 295 determined under the provisions of this chapter without regard
 296 to this section and s. 738.104, for such year, or portion
 297 thereof, does not exceed the unitrust amount for such year, or
 298 portion thereof.

299 2. Net long-term capital gain described in the Internal
 300 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
 301 thereof, but only to the extent that the amount so allocated
 302 together with all other amounts, including amounts described in
 303 subparagraph 1., allocated to trust income for such year, or
 304 portion thereof, does not exceed the unitrust amount for such
 305 year, or portion thereof.

306 (5)~~(6)~~ In administering a total return unitrust, the
 307 trustee may, in its sole discretion but subject to the
 308 provisions of the governing instrument, determine:

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309 (a) The effective date of the conversion.

310 (b) The timing of distributions, including provisions for
 311 prorating a distribution for a short year in which a
 312 beneficiary's right to payments commences or ceases.

313 (c) Whether distributions are to be made in cash or in
 314 kind or partly in cash and partly in kind.

315 (d) If the trust is reconverted to an income trust, the
 316 effective date of such reconversion.

317 (e) Such other administrative issues as may be necessary
 318 or appropriate to carry out the purposes of this section.

319 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
 320 ~~provisions of~~ this section does ~~shall~~ not affect any other
 321 provision of the governing instrument, if any, regarding
 322 distributions of principal.

323 (7)~~(8)~~ Any trustee or disinterested person who in good
 324 faith takes or fails to take any action under this section is
 325 ~~shall~~ not be liable to any person affected by such action or
 326 inaction, regardless of whether such person received written
 327 notice as provided in this section or ~~and regardless of whether~~
 328 such person was under a legal disability at the time of the
 329 delivery of such notice. Such person's exclusive remedy is ~~shall~~
 330 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
 331 directing the trustee to convert an income trust to a total
 332 return unitrust, to reconvert from a total return unitrust to an
 333 income trust, or to change the percentage used to calculate the
 334 unitrust amount. If a court determines that the trustee or
 335 disinterested person has not acted in good faith in taking or
 336 failing to take any action under this section, ~~the provisions of~~

337 s. 738.105(3) applies ~~apply~~.

338 ~~(8)-(9)~~ If a majority in interest of ~~either~~ the income or
 339 remainder beneficiaries of an income trust has delivered to the
 340 trustee a written objection to the amount of the income
 341 distributions of the trust, and, if the trustee has failed to
 342 resolve the objection to the satisfaction of the objecting
 343 beneficiaries within 6 months after ~~from the~~ receipt of such
 344 written objection, ~~then~~ the objecting beneficiaries may petition
 345 the court in accordance with subsection (3).

346 ~~(9)-(10)~~ This section pertains ~~shall be construed as~~
 347 ~~pertaining~~ to the administration of a trust and is applicable to
 348 any trust that is administered ~~either~~ in this state or under
 349 Florida law unless:

350 (a) The governing instrument reflects an intention that
 351 the current beneficiary or beneficiaries are to receive an
 352 amount other than a reasonable current return from the trust;

353 (b) The trust is a trust described in the Internal Revenue
 354 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
 355 2702(a)(3), or s. 2702(b);

356 (c) One or more persons to whom the trustee could
 357 distribute income have a power of withdrawal over the trust:

358 1. That is not subject to an ascertainable standard under
 359 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
 360 exceeds in any calendar year the amount set forth in the
 361 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

362 2. A power of withdrawal over the trust that can be
 363 exercised to discharge a duty of support he or she possesses; or

364 (d) The governing instrument expressly prohibits use of

365 this section by specific reference to the section. A provision
 366 in the governing instrument that, "The provisions of section
 367 738.1041, Florida Statutes, as amended, or any corresponding
 368 provision of future law, may ~~shall~~ not be used in the
 369 administration of this trust," or similar words reflecting such
 370 intent are ~~shall be~~ sufficient to preclude the use of this
 371 section; ~~or~~

372 ~~(e) The trust is a trust with respect to which a trustee~~
 373 ~~currently possesses the power to adjust under s. 738.104.~~

374 (10) ~~(11)~~ The grantor of a trust may create an express
 375 total return unitrust that ~~which~~ will be ~~become~~ effective as
 376 provided in the trust instrument ~~document~~ without requiring a
 377 conversion under this section.

378 (a) An express total return unitrust created by the
 379 grantor of the trust is ~~shall be~~ treated as a unitrust ~~under~~
 380 ~~this section~~ only if the terms of the trust instrument ~~document~~
 381 contain all of the following provisions:

382 1. ~~(a)~~ That distributions from the trust will be unitrust
 383 amounts and the manner in which the unitrust amount will be
 384 calculated; ~~and the method in which the fair market value of the~~
 385 ~~trust will be determined.~~

386 2. ~~(b)~~ The percentage to be used to calculate the unitrust
 387 amount, provided the percentage used is not greater than 5
 388 percent nor less than 3 percent.

389 (b) The trust instrument may also contain provisions
 390 specifying:

391 1. ~~(c)~~ The method to be used in determining the fair market
 392 value of the trust, including whether to use an average fair

393 market value or the fair market value of the assets held by the
 394 trust at the beginning of the current year; or-

395 2.~~(d)~~ Which assets, if any, are to be excluded in
 396 determining the unitrust amount.

397 (c) This section establishes the method of determining the
 398 fair market value of the trust if the trust instrument is silent
 399 as to subparagraph (b)1., and to specify those assets, if any,
 400 which are to be excluded in determining the unitrust amount if
 401 the trust instrument is silent as to subparagraph (b)2.

402 Section 5. Subsections (1), (3), and (4) of section
 403 738.105, Florida Statutes, are amended to read:

404 738.105 Judicial control of discretionary powers.-

405 (1) A court may ~~shall~~ not change a trustee's fiduciary's
 406 decision to exercise or not to exercise a discretionary power
 407 conferred by this chapter unless the court determines that the
 408 decision was an abuse of the trustee's fiduciary's discretion. A
 409 court may ~~shall~~ not determine that a trustee fiduciary abused
 410 its discretion merely because the court would have exercised the
 411 discretion in a different manner or would not have exercised the
 412 discretion.

413 (3) If a court determines that a trustee fiduciary has
 414 abused its discretion, the remedy is ~~shall be~~ to restore the
 415 income and remainder beneficiaries to the positions they would
 416 have occupied if the trustee fiduciary had not abused its
 417 discretion, in accordance with ~~according to~~ the following rules:

418 (a) To the extent the abuse of discretion has resulted in
 419 no distribution to a beneficiary or a distribution that is too
 420 small, the court shall require the trustee fiduciary to

421 distribute from the trust to the beneficiary an amount the court
 422 determines will restore the beneficiary, in whole or in part, to
 423 his or her appropriate position.

424 (b) To the extent the abuse of discretion has resulted in
 425 a distribution to a beneficiary that is too large, the court
 426 shall restore the beneficiaries, the trust, or both, in whole or
 427 in part, to their appropriate positions by requiring the trustee
 428 ~~fiduciary~~ to withhold an amount from one or more future
 429 distributions to the beneficiary who received the distribution
 430 that was too large or requiring that beneficiary to return some
 431 or all of the distribution to the trust.

432 (c) To the extent the court is unable, after applying
 433 paragraphs (a) and (b), to restore the beneficiaries or, the
 434 trust, or both, to the positions they would have occupied if the
 435 trustee ~~fiduciary~~ had not abused its discretion, the court may
 436 require the trustee ~~fiduciary~~ to pay an appropriate amount from
 437 its own funds to one or more of the beneficiaries or the trust
 438 or both.

439 (4) Upon the filing of a petition by the trustee
 440 ~~fiduciary~~, the court having jurisdiction over the trust or
 441 estate shall determine whether a proposed exercise or
 442 nonexercise by the trustee ~~fiduciary~~ of a discretionary power
 443 conferred by this chapter will result in an abuse of the
 444 trustee's ~~fiduciary's~~ discretion. If the petition describes the
 445 proposed exercise or nonexercise of the power and contains
 446 sufficient information to inform the beneficiaries of the
 447 reasons for the proposal, the facts upon which the trustee
 448 ~~fiduciary~~ relies, and an explanation of how the income and

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449 remainder beneficiaries will be affected by the proposed
 450 exercise or nonexercise of the power, a beneficiary who
 451 challenges the proposed exercise or nonexercise has the burden
 452 of establishing that such exercise or nonexercise will result in
 453 an abuse of discretion.

454 Section 6. Subsections (1) through (4) of section 738.201,
 455 Florida Statutes, are amended to read:

456 738.201 Determination and distribution of net income.—

457 After a decedent dies, in the case of an estate, or after an
 458 income interest in a trust ends, the following rules apply:

459 (1) A fiduciary of an estate or of a terminating income
 460 interest shall determine the amount of net income and net
 461 principal receipts received from property specifically given to
 462 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
 463 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
 464 distribute the net income and net principal receipts to the
 465 beneficiary who is to receive the specific property.

466 (2) A fiduciary shall determine the remaining net income
 467 of a decedent's estate or a terminating income interest under
 468 ~~the rules in ss. 738.301-738.706 which apply to trustees~~ and by:

469 (a) Including in net income all income from property used
 470 to discharge liabilities.

471 (b) Paying from income or principal, in the fiduciary's
 472 discretion, fees of attorneys, accountants, and fiduciaries;
 473 court costs and other expenses of administration; and interest
 474 on death taxes, ~~but~~ The fiduciary may pay those expenses from
 475 income of property passing to a trust for which the fiduciary
 476 claims an estate tax marital or charitable deduction under the

477 Internal Revenue Code or comparable law of any state only to the
 478 extent the payment of those expenses from income will not cause
 479 the reduction or loss of the deduction.

480 (c) Paying from principal all other disbursements made or
 481 incurred in connection with the settlement of a decedent's
 482 estate or the winding up of a terminating income interest,
 483 including debts, funeral expenses, disposition of remains,
 484 family allowances, and death taxes and related penalties that
 485 are apportioned to the estate or terminating income interest by
 486 the will, the terms of the trust, or applicable law.

487 (3) If A fiduciary shall distribute to a beneficiary who
 488 receives a pecuniary ~~devise amount~~ outright is also entitled to
 489 receive the interest or any other amount on the devise under the
 490 terms of provided by the will or, the terms of the trust, the
 491 fiduciary shall distribute the interest or other amount
 492 ~~applicable law~~ from net income determined under subsection (2)
 493 or from principal to the extent net income is insufficient. ~~If a~~
 494 ~~beneficiary is to receive a pecuniary amount outright from a~~
 495 ~~trust after an income interest ends and no interest or other~~
 496 ~~amount is provided for by the terms of the trust or applicable~~
 497 ~~law, the fiduciary shall distribute the interest or other amount~~
 498 ~~to which the beneficiary would be entitled under applicable law~~
 499 ~~if the pecuniary amount were required to be paid under a will.~~

500 (4) A fiduciary shall distribute the net income remaining
 501 after distributions required under subsections (1)-(3) by
 502 ~~subsection (3)~~ in the manner described in s. 738.202 to all
 503 other beneficiaries, including a beneficiary who receives a
 504 pecuniary amount in trust, even if the beneficiary holds an

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505 unqualified power to withdraw assets from the trust or other
 506 presently exercisable general power of appointment over the
 507 trust.

508 Section 7. Section 738.202, Florida Statutes, is amended
 509 to read:

510 738.202 Distribution to residuary and remainder
 511 beneficiaries.—

512 (1) Each beneficiary described in s. 738.201(4) is
 513 entitled to receive a portion of the net income remaining after
 514 the application of s. 738.201(1)-(3), which is equal to the
 515 beneficiary's fractional interest in undistributed principal
 516 assets, using carrying values as of the distribution date. If a
 517 fiduciary makes more than one distribution of assets to
 518 beneficiaries to whom this section applies, each beneficiary,
 519 including one who does not receive part of the distribution, is
 520 entitled, as of each distribution date, to the net income the
 521 fiduciary ~~has~~ received after the date of death or terminating
 522 event or earlier distribution date but has not distributed as of
 523 the current distribution date.

524 (2) In determining a beneficiary's share of net income,
 525 the following applies ~~rules apply~~:

526 (a) The beneficiary is entitled to receive a portion of
 527 the net income equal to the beneficiary's fractional interest in
 528 the carrying value of the undistributed principal assets
 529 immediately before the distribution date, excluding the amount
 530 of unpaid liabilities ~~including assets that later may be sold to~~
 531 ~~meet principal obligations.~~

532 (b) The beneficiary's fractional interest in the

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533 undistributed principal assets shall be calculated: without
 534 ~~regard to~~

535 1. At the time the interest began and adjusted for any
 536 disproportionate distributions since the interest began;

537 2. By excluding any liabilities of the estate or trust
 538 from the calculation;

539 3. By also excluding property specifically given to a
 540 beneficiary and property required to pay pecuniary amounts not
 541 in trust; ~~and-~~

542 ~~4.(c) The beneficiary's fractional interest in the~~
 543 ~~undistributed principal assets shall be calculated~~ On the basis
 544 of the aggregate carrying value of those assets determined under
 545 subsection (1) as of the distribution date without reducing the
 546 value by any unpaid principal obligation.

547 (c) If a disproportionate distribution of principal is
 548 made to any beneficiary, the respective fractional interests of
 549 all beneficiaries in the remaining underlying assets shall be
 550 recomputed by:

551 1. Adjusting the carrying value of the principal assets to
 552 their fair market value before the distribution;

553 2. Reducing the fractional interest of the recipient of
 554 the disproportionate distribution in the remaining principal
 555 assets by the fair market value of the principal distribution;
 556 and

557 3. Recomputing the fractional interests of all
 558 beneficiaries in the remaining principal assets based upon the
 559 now restated carrying values.

560 ~~(d) The distribution date for purposes of this section may~~

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561 | ~~be the date as of which the fiduciary calculates the value of~~
562 | ~~the assets if that date is reasonably near the date on which~~
563 | ~~assets are actually distributed.~~

564 | (3) If a fiduciary does not distribute all of the
565 | collected but undistributed net income to each person as of a
566 | distribution date, the fiduciary shall maintain appropriate
567 | records showing the interest of each beneficiary in that net
568 | income.

569 | (4) A fiduciary may apply the provisions of ~~rules in~~ this
570 | section, to the extent the fiduciary considers appropriate, to
571 | net gain or loss realized after the date of death or terminating
572 | event or earlier distribution date from the disposition of a
573 | principal asset if this section applies to the income from the
574 | asset.

575 | (5) The carrying value or fair market value of trust
576 | assets shall be determined on an asset-by-asset basis and are
577 | ~~shall be~~ conclusive if reasonable and determined in good faith.
578 | Determinations of fair market value based on appraisals
579 | performed within 2 years before or after the valuation date are
580 | ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
581 | are ~~shall be~~ conclusively presumed to be reasonable and
582 | determined in good faith unless proven otherwise in a proceeding
583 | commenced by or on behalf of a person interested in the trust
584 | within the time provided in s. 736.1008.

585 | (6) All distributions to a beneficiary shall be valued
586 | based on their fair market value on the date of distribution.

587 | Section 8. Subsection (4) of section 738.301, Florida
588 | Statutes, is amended to read:

589 738.301 When right to income begins and ends.—An income
 590 beneficiary is entitled to net income from the date on which the
 591 income interest begins.

592 (4) An income interest ends on the day before an income
 593 beneficiary dies or another terminating event occurs, or on the
 594 last day of a period during which there is no beneficiary to
 595 whom a fiduciary ~~trustee~~ may distribute income.

596 Section 9. Subsections (1) and (2) of section 738.302,
 597 Florida Statutes, are amended to read:

598 738.302 Apportionment of receipts and disbursements when
 599 decedent dies or income interest begins.—

600 (1) A fiduciary ~~trustee~~ shall allocate an income receipt
 601 or disbursement other than one to which s. 738.201(1) applies to
 602 principal if the due date of the receipt or disbursement occurs
 603 before a decedent dies in the case of an estate or before an
 604 income interest begins in the case of a trust or successive
 605 income interest.

606 (2) A fiduciary ~~trustee~~ shall allocate an income receipt
 607 or disbursement to income if the due date of the receipt or
 608 disbursement occurs on or after the date on which a decedent
 609 dies or an income interest begins and the due date is a periodic
 610 due date. An income receipt or disbursement shall be treated as
 611 accruing from day to day if the due date of the receipt or
 612 disbursement is not periodic or the receipt or disbursement has
 613 no due date. The portion of the receipt or disbursement accruing
 614 before the date on which a decedent dies or an income interest
 615 begins shall be allocated to principal and the balance shall be
 616 allocated to income.

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617 Section 10. Subsections (2) and (3) of section 738.303,
618 Florida Statutes, are amended to read:

619 738.303 Apportionment when income interest ends.—

620 (2) When a mandatory income interest ends, the fiduciary
621 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
622 that date, or the estate of a deceased mandatory income
623 beneficiary whose death causes the interest to end, the
624 beneficiary's share of the undistributed income that is not
625 disposed of under the terms of the trust unless the beneficiary
626 has an unqualified power to revoke more than 5 percent of the
627 trust immediately before the income interest ends. In the latter
628 case, the undistributed income from the portion of the trust
629 that may be revoked shall be added to principal.

630 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
631 annuity or a fixed fraction of the value of the trust's assets
632 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
633 and to the extent required by applicable law to accomplish a
634 purpose of the trust or its grantor relating to income, gift,
635 estate, or other tax requirements.

636 Section 11. Section 738.401, Florida Statutes, is amended
637 to read:

638 738.401 Character of receipts.—

639 (1) For purposes of this section, the term "entity" means
640 a corporation, partnership, limited liability company, regulated
641 investment company, real estate investment trust, common trust
642 fund, or any other organization in which a fiduciary ~~trustee~~ has
643 an interest other than a trust or estate to which s. 738.402
644 applies, a business or activity to which s. 738.403 applies, or

645 an asset-backed security to which s. 738.608 applies.

646 (2) Except as otherwise provided in this section, a
 647 fiduciary ~~trustee~~ shall allocate to income money received from
 648 an entity.

649 (3) Except as otherwise provided in this section, a
 650 fiduciary ~~trustee~~ shall allocate the following receipts from an
 651 entity to principal:

652 (a) Property other than money.

653 (b) Money received in one distribution or a series of
 654 related distributions in exchange for part or all of a trust's
 655 or estate's interest in the entity.

656 (c) Money received in total or partial liquidation of the
 657 entity.

658 (d) Money received from an entity that is a regulated
 659 investment company or a real estate investment trust if the
 660 money received ~~distributed~~ represents short-term or long-term
 661 capital gain realized within the entity.

662 (e) Money received from an entity listed on a public stock
 663 exchange during any year of the trust or estate which exceeds 10
 664 percent of the fair market value of the trust's or estate's
 665 interest in the entity on the first day of that year. The amount
 666 to be allocated to principal must be reduced to the extent that
 667 the cumulative distributions from the entity to the trust or
 668 estate allocated to income does not exceed a cumulative annual
 669 return of 3 percent of the fair market value of the interest in
 670 the entity at the beginning of each year or portion of a year
 671 for the number of years or portion of years in the period that
 672 the interest in the entity has been held by the trust or estate.

673 If a trustee has exercised a power to adjust under s. 738.104
 674 during any period the interest in the entity has been held by
 675 the trust, the trustee, in determining the total income
 676 distributions from that entity, must take into account the
 677 extent to which the exercise of that power resulted in income to
 678 the trust from that entity for that period. If the income of the
 679 trust for any period has been computed under s. 738.1041, the
 680 trustee, in determining the total income distributions from that
 681 entity for that period, must take into account the portion of
 682 the unitrust amount paid as a result of the ownership of the
 683 trust's interest in the entity for that period.

684 (4) If a fiduciary trustee elects, or continues an
 685 election made by its predecessor, to reinvest dividends in
 686 shares of stock of a distributing corporation or fund, whether
 687 evidenced by new certificates or entries on the books of the
 688 distributing entity, the new shares ~~shall~~ retain their character
 689 as income.

690 (5) Money is received in partial liquidation:

691 (a) To the extent the entity, at or near the time of a
 692 distribution, indicates that such money is a distribution in
 693 partial liquidation; or

694 (b) To the extent ~~if~~ the total amount of money and
 695 property received in a distribution or series of related
 696 distributions from an entity that is not listed on a public
 697 stock exchange exceeds is greater than 20 percent of the trust's
 698 or estate's pro rata share of the entity's gross assets, as
 699 shown by the entity's year-end financial statements immediately
 700 preceding the initial receipt.

701
 702 This subsection does not apply to an entity to which subsection
 703 (7) applies.

704 ~~(6) Money may not is not received in partial liquidation,~~
 705 ~~nor may money~~ be taken into account in determining any excess
 706 under paragraph (5) (b), to the extent that the cumulative
 707 distributions from the entity to the trust or the estate
 708 allocated to income do not exceed the greater of: such money
 709 ~~does not exceed the amount of income tax a trustee or~~
 710 ~~beneficiary must pay on taxable income of the entity that~~
 711 ~~distributes the money.~~

712 (a) A cumulative annual return of 3 percent of the
 713 entity's carrying value computed at the beginning of each period
 714 for the number of years or portion of years that the entity was
 715 held by the fiduciary. If a trustee has exercised a power to
 716 adjust under s. 738.104 during any period the interest in the
 717 entity has been held by the trust, the trustee, in determining
 718 the total income distributions from that entity, must take into
 719 account the extent to which exercise of the power resulted in
 720 income to the trust from that entity for that period. If the
 721 income of a trust for any period has been computed pursuant to
 722 s. 738.1041, the trustee, in determining the total income
 723 distributions from the entity for that period, must take into
 724 account the portion of the unitrust amount paid as a result of
 725 the ownership of the trust's interest in the entity for that
 726 period; or

727 (b) If the entity is treated as a partnership, subchapter
 728 S corporation, or a disregarded entity pursuant to the Internal

729 Revenue Code of 1986, as amended, the amount of income tax
 730 attributable to the trust's or estate's ownership share of the
 731 entity, based on its pro rata share of the taxable income of the
 732 entity that distributes the money, for the number of years or
 733 portion of years that the interest in the entity was held by the
 734 fiduciary, calculated as if all of that tax was incurred by the
 735 fiduciary.

736 (7) The following applies ~~special rules~~ shall apply to
 737 money ~~moneys~~ or property received by a private trustee as a
 738 distribution from an investment entity ~~entities~~ described in
 739 this subsection:

740 (a) The trustee shall first treat as income of the trust
 741 all of the money or property received from the investment entity
 742 in the current year which would be considered income under this
 743 chapter if the trustee had directly held the trust's pro rata
 744 share of the assets of the investment entity. For this purpose,
 745 all distributions received in the current year must be
 746 aggregated.

747 (b) The trustee shall next treat as income of the trust
 748 any additional money or property received in the current year
 749 which would have been considered income in the prior 2 years
 750 under paragraph (a) if additional money or property had been
 751 received from the investment entity in any of those prior 2
 752 years. The amount to be treated as income shall be reduced by
 753 any distributions of money or property made by the investment
 754 entity to the trust during the current and prior 2 years which
 755 were treated as income under this paragraph.

756 (c) The remainder of the distribution, if any, is treated

757 | as principal.

758 | (d) As used in this subsection, the term:

759 | 1. "Investment entity" means an entity, other than a
 760 | business activity conducted by the trustee described in s.
 761 | 738.403 or an entity that is listed on a public stock exchange,
 762 | which is treated as a partnership, subchapter S corporation, or
 763 | disregarded entity pursuant to the Internal Revenue Code of
 764 | 1986, as amended, and which normally derives 50 percent or more
 765 | of its annual cumulative net income from interest, dividends,
 766 | annuities, royalties, rental activity, or other passive
 767 | investments, including income from the sale or exchange of such
 768 | passive investments.

769 | 2. "Private trustee" means a trustee who is a natural
 770 | person, but only if the trustee is unable to use the power to
 771 | adjust between income and principal with respect to receipts
 772 | from entities described in this subsection pursuant to s.
 773 | 738.104. A bank, trust company, or other commercial trustee is
 774 | not considered a private trustee.

775 | (8) This section shall be applied before ss. 738.705 and
 776 | 738.706 and does not modify or change any of the provisions of
 777 | those sections.

778 | ~~(a) Moneys or property received from a targeted entity~~
 779 | ~~that is not an investment entity which do not exceed the trust's~~
 780 | ~~pro rata share of the undistributed cumulative net income of the~~
 781 | ~~targeted entity during the time an ownership interest in the~~
 782 | ~~targeted entity was held by the trust shall be allocated to~~
 783 | ~~income. The balance of moneys or property received from a~~
 784 | ~~targeted entity shall be allocated to principal.~~

785 ~~(b) If trust assets include any interest in an investment~~
 786 ~~entity, the designated amount of moneys or property received~~
 787 ~~from the investment entity shall be treated by the trustee in~~
 788 ~~the same manner as if the trustee had directly held the trust's~~
 789 ~~pro rata share of the assets of the investment entity~~
 790 ~~attributable to the distribution of such designated amount.~~
 791 ~~Thereafter, distributions shall be treated as principal.~~

792 ~~(c) For purposes of this subsection, the following~~
 793 ~~definitions shall apply:~~

794 ~~1. "Cumulative net income" means the targeted entity's net~~
 795 ~~income as determined using the method of accounting regularly~~
 796 ~~used by the targeted entity in preparing its financial~~
 797 ~~statements, or if no financial statements are prepared, the net~~
 798 ~~book income computed for federal income tax purposes, for every~~
 799 ~~year an ownership interest in the entity is held by the trust.~~
 800 ~~The trust's pro rata share shall be the cumulative net income~~
 801 ~~multiplied by the percentage ownership of the trust.~~

802 ~~2. "Designated amount" means moneys or property received~~
 803 ~~from an investment entity during any year that is equal to the~~
 804 ~~amount of the distribution that does not exceed the greater of:~~

805 ~~a. The amount of income of the investment entity for the~~
 806 ~~current year, as reported to the trustee by the investment~~
 807 ~~entity for federal income tax purposes; or~~

808 ~~b. The amount of income of the investment entity for the~~
 809 ~~current year and the prior 2 years, as reported to the trustee~~
 810 ~~by the investment entity for federal income tax purposes, less~~
 811 ~~any distributions of moneys or property made by the investment~~
 812 ~~entity to the trustee during the prior 2 years.~~

813 ~~3. "Investment entity" means a targeted entity that~~
 814 ~~normally derives 50 percent or more of its annual cumulative net~~
 815 ~~income from interest, dividends, annuities, royalties, rental~~
 816 ~~activity, or other passive investments, including income from~~
 817 ~~the sale or exchange of such passive investments.~~

818 ~~4. "Private trustee" means a trustee who is an individual,~~
 819 ~~but only if the trustee is unable to utilize the power to adjust~~
 820 ~~between income and principal with respect to receipts from~~
 821 ~~entities described in this subsection pursuant to s. 738.104. A~~
 822 ~~bank, trust company, or other commercial trustee shall not be~~
 823 ~~considered to be a private trustee.~~

824 ~~5. "Targeted entity" means any entity that is treated as a~~
 825 ~~partnership, subchapter S corporation, or disregarded entity~~
 826 ~~pursuant to the Internal Revenue Code of 1986, as amended, other~~
 827 ~~than an entity described in s. 738.403.~~

828 ~~6. "Undistributed cumulative net income" means the trust's~~
 829 ~~pro rata share of cumulative net income, less all prior~~
 830 ~~distributions from the targeted entity to the trust that have~~
 831 ~~been allocated to income.~~

832 ~~(d) This subsection shall not be construed to modify or~~
 833 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
 834 ~~to income taxes.~~

835 ~~(8) A trustee may rely upon a statement made by an entity~~
 836 ~~about the source or character of a distribution, about the~~
 837 ~~amount of profits of a targeted entity, or about the nature and~~
 838 ~~value of assets of an investment entity if the statement is made~~
 839 ~~at or near the time of distribution by the entity's board of~~
 840 ~~directors or other person or group of persons authorized to~~

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841 ~~exercise powers to pay money or transfer property comparable to~~
 842 ~~those of a corporation's board of directors.~~

843 Section 12. Section 738.402, Florida Statutes, is amended
 844 to read:

845 738.402 Distribution from trust or estate.—A fiduciary
 846 ~~trustee~~ shall allocate to income an amount received as a
 847 distribution of income from a trust or an estate in which the
 848 trust has an interest other than a purchased interest and ~~shall~~
 849 allocate to principal an amount received as a distribution of
 850 principal from such a trust or estate. If a fiduciary trustee
 851 purchases an interest in a trust that is an investment entity,
 852 or a decedent or donor transfers an interest in such a trust to
 853 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
 854 receipt from the trust.

855 Section 13. Section 738.403, Florida Statutes, is amended
 856 to read:

857 738.403 Business and other activities conducted by
 858 fiduciary trustee.—

859 (1) If a fiduciary trustee who conducts a business or
 860 other activity determines that it is in the best interest of all
 861 the beneficiaries to account separately for the business or
 862 activity instead of accounting for the business or activity as
 863 part of the trust's general accounting records, the fiduciary
 864 ~~trustee~~ may maintain separate accounting records for the
 865 transactions of the ~~such~~ business or other activity, whether or
 866 not the assets of such business or activity are segregated from
 867 other trust assets.

868 (2) A fiduciary trustee who accounts separately for a

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869 business or other activity may determine the extent to which the
 870 net cash receipts of the ~~such~~ business or activity must be
 871 retained for working capital, the acquisition or replacement of
 872 fixed assets, and other reasonably foreseeable needs of the
 873 business or activity, and the extent to which the remaining net
 874 cash receipts are accounted for as principal or income in the
 875 trust's general accounting records. If a fiduciary ~~trustee~~ sells
 876 assets of the business or other activity, other than in the
 877 ordinary course of the business or activity, the fiduciary must
 878 ~~trustee shall~~ account for the net amount received as principal
 879 in the trust's general accounting records to the extent the
 880 fiduciary ~~trustee~~ determines that the amount received is no
 881 longer required in the conduct of the business.

882 (3) Activities for which a fiduciary ~~trustee~~ may maintain
 883 separate accounting records include:

- 884 (a) Retail, manufacturing, service, and other traditional
 885 business activities.
- 886 (b) Farming.
- 887 (c) Raising and selling livestock and other animals.
- 888 (d) Management of rental properties.
- 889 (e) Extraction of minerals and other natural resources.
- 890 (f) Timber operations.
- 891 (g) Activities to which s. 738.607 ~~738.608~~ applies.

892 Section 14. Section 738.501, Florida Statutes, is amended
 893 to read:

894 738.501 Principal receipts.—A fiduciary ~~trustee~~ shall
 895 allocate to principal:

- 896 (1) To the extent not allocated to income under this

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897 chapter, assets received from a transferor during the
 898 transferor's lifetime, a decedent's estate, a trust with a
 899 terminating income interest, or a payor under a contract naming
 900 the trust or its fiduciary ~~trustee~~ as beneficiary.

901 (2) Money or other property received from the sale,
 902 exchange, liquidation, or change in form of a principal asset,
 903 including realized profit, subject to this section.

904 (3) Amounts recovered from third parties to reimburse the
 905 trust because of disbursements described in s. 738.702(1)(g) or
 906 for other reasons to the extent not based on the loss of income.

907 (4) Proceeds of property taken by eminent domain; however
 908 ~~but~~ a separate award made for the loss of income with respect to
 909 an accounting period during which a current income beneficiary
 910 had a mandatory income interest is income.

911 (5) Net income received in an accounting period during
 912 which there is no beneficiary to whom a fiduciary ~~trustee~~ may or
 913 shall distribute income.

914 (6) Other receipts as provided in ss. 738.601-738.608.

915 Section 15. Section 738.502, Florida Statutes, is amended
 916 to read:

917 738.502 Rental property.—~~If To the extent~~ a fiduciary
 918 ~~trustee~~ accounts for receipts from rental property pursuant to
 919 this section, the fiduciary ~~trustee~~ shall allocate to income an
 920 amount received as rent of real or personal property, including
 921 an amount received for cancellation or renewal of a lease. An
 922 amount received as a refundable deposit, including a security
 923 deposit or a deposit that is to be applied as rent for future
 924 periods, must ~~shall~~ be added to principal and held subject to

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925 the terms of the lease and is not available for distribution to
 926 a beneficiary until the fiduciary's ~~trustee's~~ contractual
 927 obligations have been satisfied with respect to that amount.

928 Section 16. Subsections (1), (2), and (3) of section
 929 738.503, Florida Statutes, are amended to read:

930 738.503 Obligation to pay money.—

931 (1) An amount received as interest, whether determined at
 932 a fixed, variable, or floating rate, on an obligation to pay
 933 money to the fiduciary ~~trustee~~, including an amount received as
 934 consideration for prepaying principal, shall be allocated to
 935 income without any provision for amortization of premium.

936 (2) Except as otherwise provided herein, a fiduciary
 937 ~~trustee~~ shall allocate to principal an amount received from the
 938 sale, redemption, or other disposition of an obligation to pay
 939 money to the fiduciary ~~trustee~~.

940 (3) The increment in value of a bond or other obligation
 941 for the payment of money bearing no stated interest but payable
 942 at a future time in excess of the price at which it was issued
 943 or purchased, if purchased after issuance, is distributable as
 944 income. If the increment in value accrues and becomes payable
 945 pursuant to a fixed schedule of appreciation, it may be
 946 distributed to the beneficiary who was the income beneficiary at
 947 the ~~this~~ time of increment from the first principal cash
 948 available or, if none is available, when the increment is
 949 realized by sale, redemption, or other disposition. If ~~When~~
 950 unrealized increment is distributed as income but out of
 951 principal, the principal must ~~shall~~ be reimbursed for the
 952 increment when realized. If, in the reasonable judgment of the

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953 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
 954 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
 955 withhold the payment of incremental interest to the income
 956 beneficiary.

957 Section 17. Subsections (1) and (2) of section 738.504,
 958 Florida Statutes, are amended to read:

959 738.504 Insurance policies and similar contracts.—

960 (1) Except as otherwise provided in subsection (2), a
 961 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
 962 life insurance policy or other contract in which the trust or
 963 its fiduciary ~~trustee~~ is named as beneficiary, including a
 964 contract that insures the trust or its fiduciary ~~trustee~~ against
 965 loss for damage to, destruction of, or loss of title to a trust
 966 asset. The fiduciary ~~trustee~~ shall allocate dividends on an
 967 insurance policy to income if the premiums on the policy are
 968 paid from income and to principal if the premiums are paid from
 969 principal.

970 (2) A fiduciary ~~trustee~~ shall allocate to income the
 971 proceeds of a contract that insures the fiduciary ~~trustee~~
 972 against loss of occupancy or other use by an income beneficiary,
 973 loss of income, or, subject to s. 738.403, loss of profits from
 974 a business.

975 Section 18. Section 738.601, Florida Statutes, is amended
 976 to read:

977 738.601 Insubstantial allocations not required.—If a
 978 fiduciary ~~trustee~~ determines that an allocation between
 979 principal and income required by s. 738.602, s. 738.603, s.
 980 738.604, s. 738.605, or s. 738.608 is insubstantial, the

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981 | fiduciary trustee may allocate the entire amount to principal
 982 | unless one of the circumstances described in s. 738.104(3)
 983 | applies to the allocation. This power may be exercised by a
 984 | cofiduciary under ~~cofiduciary under~~ ~~trustee~~ in the circumstances described in s.
 985 | 738.104(4) and may be released for the reasons and in the manner
 986 | described in s. 738.104(5). An allocation is presumed to be
 987 | insubstantial if:

- 988 | (1) The amount of the allocation would increase or
- 989 | decrease net income in an accounting period, as determined
- 990 | before the allocation, by less than 10 percent; or
- 991 | (2) The value of the asset producing the receipt for which
- 992 | the allocation would be made is less than 10 percent of the
- 993 | total value of the trust's assets at the beginning of the
- 994 | accounting period.

995 | Section 19. Section 738.602, Florida Statutes, is amended
 996 | to read:

997 | 738.602 Payments from deferred compensation plans,
 998 | annuities, and retirement plans or accounts.—

- 999 | (1) As used in ~~For purposes of~~ this section, the term:
- 1000 | (a) "Fund" means a private or commercial annuity, an
- 1001 | individual retirement account, an individual retirement annuity,
- 1002 | a deferred compensation plan, a pension plan, a profit-sharing
- 1003 | plan, a stock-bonus plan, an employee stock-ownership plan, or
- 1004 | another similar arrangement in which federal income tax is
- 1005 | deferred.
- 1006 | (b) "Income of the fund" means income that is determined
- 1007 | according to subsection (2) or subsection (3).
- 1008 | (c) "Nonseparate account" means a fund for which the value

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1009 of the participant's or account owner's right to receive
 1010 benefits can be determined only by the occurrence of a date or
 1011 event as defined in the instrument governing the fund.

1012 (d) "Payment" means a distribution from a fund that a
 1013 fiduciary trustee may receive over a fixed number of years or
 1014 during the life of one or more individuals because of services
 1015 rendered or property transferred to the payor in exchange for
 1016 future payments. The term includes a distribution made in money
 1017 or property from the payor's general assets or from a fund
 1018 created by the payor or payee.

1019 (e) "Separate account" means a fund holding assets
 1020 exclusively for the benefit of a participant or account owner
 1021 and:

1022 1. The value of such assets or the value of the separate
 1023 account is ascertainable at any time; or

1024 2. The administrator of the fund maintains records that
 1025 show receipts and disbursements associated with such assets.

1026 (2)(a) For a fund that is a separate account, income of
 1027 the fund shall be determined:

1028 1. As if the fund were a trust subject to the provisions
 1029 of ss. 738.401-738.706; or

1030 2. As a unitrust amount calculated by multiplying the fair
 1031 market value of the fund as of the first day of the first
 1032 accounting period and, thereafter, as of the last day of the
 1033 accounting period that immediately precedes the accounting
 1034 period during which a payment is received by the percentage
 1035 determined in accordance with s. 738.1041(2)(b)2.a. The
 1036 fiduciary trustee shall determine such percentage as of the

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1037 first month that the fiduciary's ~~trustee's~~ election to treat the
 1038 income of the fund as a unitrust amount becomes effective. For
 1039 purposes of this subparagraph, "fair market value" means the
 1040 fair market value of the assets held in the fund as of the
 1041 applicable valuation date determined as provided in this
 1042 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
 1043 reliance upon any valuation supplied by the person or persons in
 1044 possession of the fund. If the fiduciary ~~trustee~~ makes or
 1045 terminates an election under this subparagraph, the fiduciary
 1046 ~~trustee~~ shall make such disclosure in a trust disclosure
 1047 document that satisfies the requirements of s. 736.1008(4)(a).

1048 (b) The fiduciary may ~~trustee shall have discretion to~~
 1049 elect the method of determining the income of the fund pursuant
 1050 to this subsection and may change the method of determining
 1051 income of the fund for any future accounting period.

1052 (3) For a fund that is a nonseparate account, income of
 1053 the fund is a unitrust amount determined by calculating the
 1054 present value of the right to receive the remaining payments
 1055 under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the
 1056 first day of the accounting period and multiplying it by the
 1057 percentage determined in accordance with s. 738.1041(2)(b)2.a.
 1058 The fiduciary ~~trustee~~ shall determine the unitrust amount as of
 1059 the first month that the fiduciary's ~~trustee's~~ election to treat
 1060 the income of the fund as a unitrust amount becomes effective.

1061 (4) Except for those trusts described in subsection (5),
 1062 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
 1063 payment received from a fund or the income determined under
 1064 subsection (2) or subsection (3). Any remaining amount of the

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1065 payment shall be allocated to principal ~~a payment from a fund as~~
 1066 ~~follows:~~

1067 ~~(a) That portion of the payment the payor characterizes as~~
 1068 ~~income shall be allocated to income, and any remaining portion~~
 1069 ~~of the payment shall be allocated to principal.~~

1070 ~~(b) To the extent that the payor does not characterize any~~
 1071 ~~portion of a payment as income or principal and the trustee can~~
 1072 ~~ascertain the income of the fund by the fund's account~~
 1073 ~~statements or any other reasonable source, the trustee shall~~
 1074 ~~allocate to income the lesser of the income of the fund or the~~
 1075 ~~entire payment and shall allocate to principal any remaining~~
 1076 ~~portion of the payment.~~

1077 ~~(c) If the trustee, acting reasonably and in good faith,~~
 1078 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
 1079 ~~and all or part of the payment is required to be made, the~~
 1080 ~~trustee shall allocate to income 10 percent of the portion of~~
 1081 ~~the payment that is required to be made during the accounting~~
 1082 ~~period and shall allocate the balance to principal. If no part~~
 1083 ~~of a payment is required to be made or the payment received is~~
 1084 ~~the entire amount to which the trustee is entitled, the trustee~~
 1085 ~~shall allocate the entire payment to principal. For purposes of~~
 1086 ~~this paragraph, a payment is not "required to be made" to the~~
 1087 ~~extent the payment is made because the trustee exercises a right~~
 1088 ~~of withdrawal.~~

1089 (5) For a trust that which, in order to qualify for the
 1090 estate or gift tax marital deduction under the Internal Revenue
 1091 Code or comparable law of any state, entitles the spouse to all
 1092 of the income of the trust, and the terms of the trust are

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1093 silent as to the time and frequency for distribution of the
 1094 income of the fund, ~~then:~~

1095 (a) For a fund that is a separate account, unless the
 1096 spouse directs the fiduciary ~~trustee~~ to leave the income of the
 1097 fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay
 1098 to the spouse, at least ~~no less frequently than~~ annually:

1099 1. All of the income of the fund determined in accordance
 1100 with subparagraph (2)(a)1.; or

1101 2. The income of the fund as a unitrust amount determined
 1102 in accordance with subparagraph (2)(a)2.

1103 (b) For a fund that is a nonseparate account, the
 1104 fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least
 1105 ~~no less frequently than~~ annually, the income of the fund as a
 1106 unitrust amount determined in accordance with subsection (3).

1107 (6) This section does not apply to payments to which s.
 1108 738.603 applies.

1109 Section 20. Section 738.603, Florida Statutes, is amended
 1110 to read:

1111 738.603 Liquidating asset.—

1112 (1) For purposes of this section, the term "liquidating
 1113 asset" means an asset the value of which will diminish or
 1114 terminate because the asset is expected to produce receipts for
 1115 a period of limited duration. The term includes a leasehold,
 1116 patent, copyright, royalty right, and right to receive payments
 1117 for ~~during a period of~~ more than 1 year under an arrangement
 1118 that does not provide for the payment of interest on the unpaid
 1119 balance. The term does not include a payment subject to s.

1120 738.602, resources subject to s. 738.604, timber subject to s.

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1121 738.605, an activity subject to s. 738.607, an asset subject to
 1122 s. 738.608, or any asset for which the fiduciary trustee
 1123 establishes a reserve for depreciation under s. 738.703.

1124 (2) A fiduciary trustee shall allocate to income 5 ~~10~~
 1125 percent of the receipts from the carrying value of a liquidating
 1126 asset and the balance to principal. Amounts allocated to
 1127 principal shall reduce the carrying value of the liquidating
 1128 asset, but not below zero. Amounts received in excess of the
 1129 remaining carrying value must be allocated to principal.

1130 Section 21. Subsections (1) and (4) of section 738.604,
 1131 Florida Statutes, are amended to read:

1132 738.604 Minerals, water, and other natural resources.—

1133 (1) ~~If To the extent~~ a fiduciary trustee accounts for
 1134 receipts from an interest in minerals or other natural resources
 1135 pursuant to this section, the fiduciary trustee shall allocate
 1136 such receipts as follows:

1137 (a) If received as nominal delay rental or nominal annual
 1138 rent on a lease, a receipt shall be allocated to income.

1139 (b) If received from a production payment, a receipt shall
 1140 be allocated to income if and to the extent the agreement
 1141 creating the production payment provides a factor for interest
 1142 or its equivalent. The balance shall be allocated to principal.

1143 (c) If an amount received as a royalty, shut-in-well
 1144 payment, take-or-pay payment, bonus, or delay rental is more
 1145 than nominal, 90 percent shall be allocated to principal and the
 1146 balance to income.

1147 (d) If an amount is received from a working interest or
 1148 any other interest not provided for in paragraph (a), paragraph

1149 (b), or paragraph (c), 90 percent of the net amount received
 1150 shall be allocated to principal and the balance to income.

1151 (4) If a trust or estate owns an interest in minerals,
 1152 water, or other natural resources on January 1, 2003, the
 1153 fiduciary trustee may allocate receipts from the interest as
 1154 provided in this chapter or in the manner used by the fiduciary
 1155 ~~trustee~~ before January 1, 2003. If the trust or estate acquires
 1156 an interest in minerals, water, or other natural resources after
 1157 January 1, 2003, the fiduciary trustee shall allocate receipts
 1158 from the interest as provided in this chapter.

1159 Section 22. Subsections (1), (2), and (4) of section
 1160 738.605, Florida Statutes, are amended to read:

1161 738.605 Timber.—

1162 (1) If ~~To the extent~~ a fiduciary trustee accounts for
 1163 receipts from the sale of timber and related products pursuant
 1164 to this section, the fiduciary trustee shall allocate such the
 1165 net receipts as follows:

1166 (a) To income to the extent the amount of timber removed
 1167 from the land does not exceed the rate of growth of the timber
 1168 during the accounting periods in which a beneficiary has a
 1169 mandatory income interest;

1170 (b) To principal to the extent the amount of timber
 1171 removed from the land exceeds the rate of growth of the timber
 1172 or the net receipts are from the sale of standing timber;

1173 (c) To or between income and principal if the net receipts
 1174 are from the lease of timberland or from a contract to cut
 1175 timber from land owned by a trust or estate by determining the
 1176 amount of timber removed from the land under the lease or

1177 contract and applying the rules in paragraphs (a) and (b); or
 1178 (d) To principal to the extent advance payments, bonuses,
 1179 and other payments are not allocated pursuant to paragraph (a),
 1180 paragraph (b), or paragraph (c).

1181 (2) In determining net receipts to be allocated pursuant
 1182 to subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer
 1183 to principal a reasonable amount for depletion.

1184 (4) If a trust or estate owns an interest in timberland on
 1185 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
 1186 from the sale of timber and related products as provided in this
 1187 chapter or in the manner used by the fiduciary ~~trustee~~ before
 1188 January 1, 2003. If the trust or estate acquires an interest in
 1189 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
 1190 allocate net receipts from the sale of timber and related
 1191 products as provided in this chapter.

1192 Section 23. Subsection (1) of section 738.606, Florida
 1193 Statutes, is amended to read:

1194 738.606 Property not productive of income.—

1195 (1) If a marital deduction under the Internal Revenue Code
 1196 or comparable law of any state is allowed for all or part of a
 1197 trust the income of which must ~~is required to~~ be distributed to
 1198 the grantor's spouse and the assets of which consist
 1199 substantially of property that does not provide the spouse with
 1200 sufficient income from or use of the trust assets, and if the
 1201 amounts the trustee transfers from principal to income under s.
 1202 738.104 and distributes to the spouse from principal pursuant to
 1203 the terms of the trust are insufficient to provide the spouse
 1204 with the beneficial enjoyment required to obtain the marital

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1205 deduction, the spouse may require the trustee to make property
 1206 productive of income, convert property within a reasonable time,
 1207 or exercise the power conferred by ss. 738.104 and 738.1041. The
 1208 trustee may decide which action or combination of actions to
 1209 take.

1210 Section 24. Subsections (2) and (3) of section 738.607,
 1211 Florida Statutes, are amended to read:

1212 738.607 Derivatives and options.—

1213 (2) To the extent a fiduciary ~~trustee~~ does not account
 1214 under s. 738.403 for transactions in derivatives, the fiduciary
 1215 ~~trustee~~ shall allocate to principal receipts from and
 1216 disbursements made in connection with those transactions.

1217 (3) If a fiduciary ~~trustee~~ grants an option to buy
 1218 property from the trust or estate whether or not the trust or
 1219 estate owns the property when the option is granted, grants an
 1220 option that permits another person to sell property to the trust
 1221 or estate, or acquires an option to buy property for the trust
 1222 or estate or an option to sell an asset owned by the trust or
 1223 estate, and the fiduciary ~~trustee~~ or other owner of the asset is
 1224 required to deliver the asset if the option is exercised, an
 1225 amount received for granting the option shall be allocated to
 1226 principal. An amount paid to acquire the option shall be paid
 1227 from principal. A gain or loss realized upon the exercise of an
 1228 option, including an option granted to a grantor of the trust or
 1229 estate for services rendered, shall be allocated to principal.

1230 Section 25. Subsections (2) and (3) of section 738.608,
 1231 Florida Statutes, are amended to read:

1232 738.608 Asset-backed securities.—

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1233 (2) If a trust or estate receives a payment from interest
 1234 or other current return and from other proceeds of the
 1235 collateral financial assets, the fiduciary ~~trustee~~ shall
 1236 allocate to income the portion of the payment which the payor
 1237 identifies as being from interest or other current return and
 1238 ~~shall~~ allocate the balance of the payment to principal.

1239 (3) If a trust or estate receives one or more payments in
 1240 exchange for the trust's or estate's entire interest in an
 1241 asset-backed security during a single accounting period, the
 1242 fiduciary ~~trustee~~ shall allocate the payments to principal. If a
 1243 payment is one of a series of payments that will result in the
 1244 liquidation of the trust's or estate's interest in the security
 1245 over more than a single accounting period, the fiduciary ~~trustee~~
 1246 shall allocate 10 percent of the payment to income and the
 1247 balance to principal.

1248 Section 26. Section 738.701, Florida Statutes, is amended
 1249 to read:

1250 738.701 Disbursements from income.—A fiduciary ~~trustee~~
 1251 shall make the following disbursements from income to the extent
 1252 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
 1253 applies:

1254 (1) One-half of the regular compensation of the fiduciary
 1255 ~~trustee~~ and of any person providing investment advisory or
 1256 custodial services to the fiduciary ~~trustee~~.

1257 (2) One-half of all expenses for accountings, judicial
 1258 proceedings, or other matters that involve both the income and
 1259 remainder interests.

1260 (3) All of the other ordinary expenses incurred in

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1261 connection with the administration, management, or preservation
 1262 of trust property and the distribution of income, including
 1263 interest, ordinary repairs, regularly recurring taxes assessed
 1264 against principal, and expenses of a proceeding or other matter
 1265 that concerns primarily the income interest.

1266 (4) Recurring premiums on insurance covering the loss of a
 1267 principal asset or the loss of income from or use of the asset.

1268 Section 27. Subsection (1) of section 738.702, Florida
 1269 Statutes, is amended to read:

1270 738.702 Disbursements from principal.—

1271 (1) A fiduciary ~~trustee~~ shall make the following
 1272 disbursements from principal:

1273 (a) The remaining one-half of the disbursements described
 1274 in s. 738.701(1) and (2).

1275 (b) All of the trustee's compensation calculated on
 1276 principal as a fee for acceptance, distribution, or termination
 1277 and disbursements made to prepare property for sale.

1278 (c) Payments on the principal of a trust debt.

1279 (d) Expenses of a proceeding that concerns primarily
 1280 principal, including a proceeding to construe the trust or will,
 1281 or to protect the trust, estate, or its property.

1282 (e) Premiums paid on a policy of insurance not described
 1283 in s. 738.701(4) of which the trust or estate is the owner and
 1284 beneficiary.

1285 (f) Estate, inheritance, and other transfer taxes,
 1286 including penalties, apportioned to the trust.

1287 (g) Disbursements related to environmental matters,
 1288 including reclamation, assessing environmental conditions,

1289 remedying and removing environmental contamination, monitoring
 1290 remedial activities and the release of substances, preventing
 1291 future releases of substances, collecting amounts from persons
 1292 liable or potentially liable for the costs of such activities,
 1293 penalties imposed under environmental laws or regulations and
 1294 other payments made to comply with those laws or regulations,
 1295 statutory or common law claims by third parties, and defending
 1296 claims based on environmental matters.

1297 (h) Payments representing extraordinary repairs or
 1298 expenses incurred in making a capital improvement to principal,
 1299 including special assessments; however, a fiduciary ~~trustee~~ may
 1300 establish an allowance for depreciation out of income to the
 1301 extent permitted by s. 738.703.

1302 Section 28. Subsection (2) of section 738.703, Florida
 1303 Statutes, is amended to read:

1304 738.703 Transfers from income to principal for
 1305 depreciation.—

1306 (2) A fiduciary ~~trustee~~ may transfer to principal a
 1307 reasonable amount of the net cash receipts from a principal
 1308 asset that is subject to depreciation but may not transfer any
 1309 amount for depreciation:

1310 (a) Of that portion of real property used or available for
 1311 use by a beneficiary as a residence or of tangible personal
 1312 property held or made available for the personal use or
 1313 enjoyment of a beneficiary;

1314 (b) During the administration of a decedent's estate; or

1315 (c) Under this section if the fiduciary ~~trustee~~ is
 1316 accounting under s. 738.403 for the business or activity in

1317 which the asset is used.

1318 Section 29. Subsections (1), (2), and (3) of section
 1319 738.704, Florida Statutes, are amended to read:

1320 738.704 Transfers from income to reimburse principal.—

1321 (1) If a fiduciary ~~trustee~~ makes or expects to make a
 1322 principal disbursement described in this section, the fiduciary
 1323 ~~trustee~~ may transfer an appropriate amount from income to
 1324 principal in one or more accounting periods to reimburse
 1325 principal or to provide a reserve for future principal
 1326 disbursements.

1327 (2) Principal disbursements to which subsection (1)
 1328 applies include the following, but only to the extent the
 1329 fiduciary ~~trustee~~ has not been and does not expect to be
 1330 reimbursed by a third party:

1331 (a) An amount chargeable to income but paid from principal
 1332 because the amount is unusually large.

1333 (b) Disbursements made to prepare property for rental,
 1334 including tenant allowances, leasehold improvements, and
 1335 broker's commissions.

1336 (c) Disbursements described in s. 738.702(1)(g).

1337 (3) If the asset the ownership of which gives rise to the
 1338 disbursements becomes subject to a successive income interest
 1339 after an income interest ends, a fiduciary ~~trustee~~ may continue
 1340 to transfer amounts from income to principal as provided in
 1341 subsection (1).

1342 Section 30. Section 738.705, Florida Statutes, is amended
 1343 to read:

1344 738.705 Income taxes.—

1345 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
 1346 on receipts allocated to income shall be paid from income.

1347 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
 1348 on receipts allocated to principal shall be paid from principal,
 1349 even if the tax is called an income tax by the taxing authority.

1350 (3) A tax required to be paid by a fiduciary ~~trustee~~ on
 1351 the trust's or estate's share of an entity's taxable income
 1352 shall be paid proportionately:

1353 (a) From income to the extent receipts from the entity are
 1354 allocated to income; ~~and~~

1355 (b) From principal to the extent:
 1356 ~~1.~~ receipts from the entity are allocated to principal;
 1357 and

1358 ~~2. The trust's share of the entity's taxable income~~
 1359 ~~exceeds the total receipts described in paragraph (a) and~~
 1360 ~~subparagraph 1.~~

1361 (c) From principal to the extent that the income taxes
 1362 payable by the trust or estate exceed the total distributions
 1363 from the entity.

1364 (4) After applying subsections (1)-(3), the fiduciary
 1365 shall adjust income or principal receipts to the extent that the
 1366 trust's or estate's income taxes are reduced, but not
 1367 eliminated, because the trust or estate receives a deduction for
 1368 payments made to a beneficiary. The amount distributable to that
 1369 beneficiary as income as a result of this adjustment shall be
 1370 equal to the cash received by the trust or estate, reduced, but
 1371 not below zero, by the entity's taxable income allocable to the
 1372 trust or estate multiplied by the trust's or estate's income tax

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1373 rate. The reduced amount shall be divided by the difference
 1374 between 1 and the trust's or estate's income tax rate in order
 1375 to determine the amount distributable to that beneficiary as
 1376 income before giving effect to other receipts or disbursements
 1377 allocable to that beneficiary's interest. ~~For purposes of this~~
 1378 section, receipts allocated to principal or income shall be
 1379 reduced by the amount distributed to a beneficiary from
 1380 principal or income for which the trust receives a deduction in
 1381 calculating the tax.

1382 Section 31. Section 738.801, Florida Statutes, is amended
 1383 to read:

1384 (Substantial rewording of section. See
 1385 s. 738.801, F.S., for present text.)

1386 738.801 Apportionment of expenses; improvements.-

1387 (1) For purposes of this section, the term:

1388 (a) "Remainderman" means the holder of the remainder
 1389 interests after the expiration of a tenant's estate in property.

1390 (b) "Tenant" means the holder of an estate for life or
 1391 term of years in real property or personal property, or both.

1392 (2) If a trust has not been created, expenses shall be
 1393 apportioned between the tenant and remainderman as follows:

1394 (a) The following expenses are allocated to and shall be
 1395 paid by the tenant:

1396 1. All ordinary expenses incurred in connection with the
 1397 administration, management, or preservation of the property,
 1398 including interest, ordinary repairs, regularly recurring taxes
 1399 assessed against the property, and expenses of a proceeding or
 1400 other matter that concerns primarily the tenant's estate or use

1401 of the property.

1402 2. Recurring premiums on insurance covering the loss of
 1403 the property or the loss of income from or use of the property.

1404 3. Any of the expenses described in subparagraph (b)3.
 1405 which are attributable to the use of the property by the tenant.

1406 (b) The following expenses are allocated to and shall be
 1407 paid by the remainderman:

1408 1. Payments on the principal of a debt secured by the
 1409 property, except to the extent the debt is for expenses
 1410 allocated to the tenant.

1411 2. Expenses of a proceeding or other matter that concerns
 1412 primarily the title to the property, other than title to the
 1413 tenant's estate.

1414 3. Except as provided in subparagraph (a)3., expenses
 1415 related to environmental matters, including reclamation,
 1416 assessing environmental conditions, remedying and removing
 1417 environmental contamination, monitoring remedial activities and
 1418 the release of substances, preventing future releases of
 1419 substances, collecting amounts from persons liable or
 1420 potentially liable for the costs of such activities, penalties
 1421 imposed under environmental laws or regulations and other
 1422 payments made to comply with those laws or regulations,
 1423 statutory or common law claims by third parties, and defending
 1424 claims based on environmental matters.

1425 4. Extraordinary repairs.

1426 (c) If the tenant or remainderman incurred an expense for
 1427 the benefit of his or her own estate without consent or
 1428 agreement of the other, he or she must pay such expense in full.

1429 (d) Except as provided in paragraph (c), the cost of, or
 1430 special taxes or assessments for, an improvement representing an
 1431 addition of value to property forming part of the principal
 1432 shall be paid by the tenant if the improvement is not reasonably
 1433 expected to outlast the estate of the tenant. In all other
 1434 cases, only a part shall be paid by the tenant while the
 1435 remainder shall be paid by the remainderman. The part payable by
 1436 the tenant is ascertainable by taking that percentage of the
 1437 total that is found by dividing the present value of the
 1438 tenant's estate by the present value of an estate of the same
 1439 form as that of the tenant, except that it is limited for a
 1440 period corresponding to the reasonably expected duration of the
 1441 improvement. The computation of present values of the estates
 1442 shall be made by using the rate defined in 26 U.S.C. s. 7520,
 1443 then in effect and, in the case of an estate for life, the
 1444 official mortality tables then in effect under 26 U.S.C. s.
 1445 7520. Other evidence of duration or expectancy may not be
 1446 considered.

1447 (3) This section does not apply to the extent it is
 1448 inconsistent with the instrument creating the estates, the
 1449 agreement of the parties, or the specific direction of the
 1450 taxing or other statutes.

1451 (4) The common law applicable to tenants and remaindermen
 1452 supplements this section, except as modified by this section or
 1453 other laws.

1454 Section 32. This act shall take effect January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Citizens Property Insurance Corporation

SPONSOR(S): Albritton

TIED BILLS: IDEN./SIM. **BILLS:** SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway <i>W</i>	Cooper <i>DK</i>
2) Government Operations Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over \$515 billion of property coverage to Floridians. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation: the Personal Lines Account, the Commercial Lines Account, and the Coastal Account.

In the event Citizens incurs a deficit, the corporation can levy assessments on most of Florida's property and casualty insurance policyholders in the following sequence set by statute:

1. **Citizens Policyholder Assessments:** Citizens assess its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.
2. **Regular Assessments:** Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.
3. **Emergency Assessments:** Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.

The bill eliminates the regular assessment for the Personal Lines Account and the Commercial Lines Account and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. The bill also extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Generally, limited apportionment companies are property insurers with less than \$25 million in surplus.

The bill has no fiscal impact on state or local governments, but does impact the private sector. For example, the bill increases the amount of assessments paid by Citizens' policyholders. It prevents a drain on the surplus of property insurers in the private market caused by the insurers having to prepay a Citizens' regular assessment and recoup it from policyholders over the following year. Citizens may issue more pre-event and post-event bonds than it does currently to ensure the corporation has sufficient cash to pay claims as the corporation will no longer receive the quick influx of cash the regular assessment levy provides. A more detailed fiscal impact on the private sector is provided in the Fiscal Analysis.

The bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1127.INBS.DOCX

DATE: 1/19/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over \$515 billion of property coverage to Floridians.¹

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multi-peril Policies²
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multi-peril Policies
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only³ and Multi-peril Policies
Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

Citizens' financial resources to pay property insurance claims include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it can levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.⁴ The three Citizens' accounts calculate deficits and resulting assessment needs independently, so assessments can be levied when any one or more of the three Citizens' accounts has a deficit.

¹ <https://www.citizensfla.com/>

² A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

³ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

⁴ s. 627.351(6)(b)3.a., d., and i., F.S.

The Citizens' assessment scheme is as follows:

1. Citizens Policyholder Assessments: If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.⁵ This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or an existing Citizens' policy is renewed.
2. Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%.⁶ The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.
3. Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.⁷ This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Citizens projects the corporation will have over \$5.7 billion in surplus to pay claims during the 2011 hurricane season.⁸ In addition, Citizens could be reimbursed another \$6.5 billion for claims paid by the Florida Hurricane Catastrophe Fund. Citizens purchased private reinsurance for the Coastal Account that would reimburse the corporation up to \$575 million for claims paid in this Account. Thus, the maximum amount Citizens has to pay claims in all accounts for the 2011 hurricane season is approximately \$12.775 billion.⁹

As of November 30, 2011, Citizens' total exposure is over \$515 billion. Citizens estimates the 1-in-100 year hurricane would cost over \$23.2 billion.¹⁰ The \$10.4 billion difference between Citizens' resources to pay claims (\$12.775 billion) and its 1-in-100 year exposure (\$23.2 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance. Specifically, Citizens is able to assess the following maximum amounts with their current assessment authority:

1. Citizens Policyholder Surcharge – approximately \$1.172 billion (\$391 million for the Coastal Account and \$781 million for the PLA/CLA).
2. Regular Assessment – approximately \$5.580 billion (\$1.860 billion for the Coastal Account and \$3.720 billion for the PLA/CLA).

⁵ s. 627.351(6)(b)3.i., F.S.

⁶ s. 627.351(6)(b)3.a. and b., F.S.

⁷ s. 627.352(6)(b)3.d., F.S.

⁸Data as of July 13, 2011. Information on file with the Insurance & Banking Subcommittee.

⁹ Although Citizens has another \$3.82 billion in pre-event bonding for the Coastal Account that would be available to pay claims, this bonding would have to be repaid through assessments, so is not included in the calculations. If this amount were included, Citizens would have \$16.5 billion to pay claims during the 2011 hurricane season.

¹⁰ A 1-in-100 year hurricane has a 1% probability of occurring. Information obtained from Citizens' presentation to the Financial Services Commission dated November 1, 2011.

3. **Emergency Assessment** –Unlimited maximum assessment in the aggregate because the length of the assessment is not limited. However, yearly assessments are limited to 10% of premium or 10% of the deficit per account.

Effect of Proposed Changes

The bill eliminates the regular assessment for the PLA and CLA and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. No time frame is given in current law for the OIR to order payment of emergency assessments. Nevertheless, for the emergency assessment levied by Citizens in 2007 due to losses from the 2005 hurricanes, Citizens requested, and OIR approved, a start date for the levy of emergency assessments over six months after the date the levy was requested and approved.¹¹

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. The bill authorizes Citizens' Board of Governors to levy Citizens Policyholder Surcharges and regular and emergency assessments upon their projection that a Citizens' account will incur a deficit. Current law requires the Citizens' account to actually incur a deficit prior to the levy of the Citizens Policyholder Surcharge or assessments.

Under current law, a limited apportionment property insurance company¹² must pay the regular assessment to Citizens within 12 months after Citizens levies the assessment. Generally, limited apportionment companies are property insurers with less than \$25 million in surplus. All other types of insurers subject to the regular assessment pay the assessment amount to Citizens within 30 days after Citizens levies the assessment. The bill extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Because regular assessments for the PLA and CLA are eliminated by the bill, the 15 month payment timeframe would apply to only regular assessments for the Coastal Account.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹¹Due to the 2005 hurricanes, Citizens sustained a deficit of almost \$1.8 billion. In the 2006 Legislative Session, the Legislature appropriated \$715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over \$887 million. To cover the deficit, in addition to a one-time regular assessment of 2.04%, Citizens levied an emergency assessment 1.4% for 10 years. Citizens requested the emergency assessment levy on December 7, 2006 and the OIR approved the levy on January 1, 2007. The start date of the levy, as stated in the request and approved by the OIR, was July 1, 2007. On July 1, 2011 the 1.4% assessment amount was reduced to 1% due to an increase in the assessment premium base.

(see <http://www.flor.com/sections/pandc/CitizensEmergencyAssessment.aspx>; OIR 11-03M (Informational Memorandum issued by OIR April 4, 2011 available at <http://www.flor.com/Office/Memoranda/index.aspx>)).

¹²Generally, a limited apportionment insurance company is an insurer with a surplus of \$25 million or less writing 25% or more of its total countrywide property insurance premiums in Florida. (see s. 627.351(6)(c)13., F.S.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of regular assessments for the PLA and CLA and the reduction of these assessments for the Coastal Account impacts Citizens' policyholders because they could pay more in assessments under than bill than under current law. Because regular assessments are eliminated for the PLA and CLA and reduced for the Coastal Account and the Citizens Policyholder Surcharge is unchanged, if a deficit occurs, amounts that would be collected by regular assessments to offset the deficit will no longer be collected (or will be reduced for Coastal Account deficits). Thus, the deficit amount that must be collected with emergency assessments is potentially greater than it would be under current law, leading to a larger emergency assessment or a longer assessment levy. Citizens' policyholders pay only the Citizens Policyholder Surcharge and the emergency assessment. Consequently, if there is a larger emergency assessment, then Citizens' policyholders could pay more in emergency assessments or could pay emergency assessments for a longer period under the bill than they would under current law. However, if all three Citizens' accounts levied assessments in the first year after a storm, under the bill, a Citizens' policyholder would pay less in assessments for that year due to the bill's reduction of the regular assessment in the Coastal Account and elimination of the regular assessment in the PLA and CLA, which are paid for one year only. But, in this scenario, the Citizens' policyholder would likely pay assessments over a longer period of time under the bill than under current law because the amount of deficit to be cured with emergency assessments would be larger and the time period emergency assessments can be levied is not limited.

The timing of payment of Citizens' assessments by non-Citizens' policyholders will change under the bill. Non-Citizens' property and casualty policyholders have assessments spread out over multiple years under the bill because the amount they would pay in regular assessments under current law, which is paid in one year, is transferred to emergency assessments, which are paid over multiple years. However, the total assessment amount to be paid by non-Citizens' policyholders should not change under the bill, just the timing of the payment changes.

The bill allows limited apportionment property insurance companies three additional months to pay regular assessments, from 12 months after the assessment is levied, to 15 months.

Because the bill eliminates regular assessments in the PLA and CLA, property insurers would not have to prepay these assessments up front to Citizens and recover the amount prepaid from their policyholders. Similarly, because the bill reduces the maximum regular assessment percentage in the Coastal Account, the amount prepaid by insurers for this assessment is lower than under current law. Accordingly, the drain on insurer surplus from having to prepay regular assessments up front and collecting the assessments over a year from policyholders is avoided for the PLA and CLA and reduced for the Coastal Account.

In addition, a 2011 change to statutory accounting principles relating to how regular assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.¹³ The bill reduces that impact. Most insurers produce financial statements using both statutory and generally accepted accounting principles. Insurer financial information prepared in accordance with Generally Accepted Accounting Principles (GAAP) are typically used by investors, whereas, insurer financial information prepared in accordance with statutory accounting is used by the OIR. Citizens' levy of regular assessments reduces an insurer's net worth under both statutory and GAAP accounting. Under

¹³ The changes to the statutory accounting principles that negatively impact insurer net worth paying regular assessments to Citizens were effective January 1, 2011.

both GAAP and statutory accounting, insurers incur a liability in the form of a direct charge to surplus (i.e., a loss in surplus) in the amount of the regular assessment when the company is billed for the assessment. However, GAAP and statutory accounting treat an asset to offset that liability differently. Under GAAP accounting, the full regular assessment paid by the insurer to Citizens is a direct charge to surplus (i.e. reduces surplus) and there is no an offsetting asset allowed, which immediately reduces the insurer's net worth in the amount of the assessment. Under statutory accounting, however, the full regular assessment is also a direct charge to surplus, but there is an offsetting asset that is included on the insurer's financial statement when the assessment is paid to Citizens.¹⁴ Limited apportionment companies are allowed 12 months to pay a regular assessment to Citizens, so these companies can incur a direct charge to surplus with an offsetting asset incrementally booked over a 12 month period, decreasing the net worth of the insurer until the offsetting asset is booked in full.

The bill's elimination of the regular assessment for the PLA and CLA will prevent the impact on insurer net worth associated with the assessments. The reduction of the regular assessment for the Coastal Account will reduce the impact on insurer net worth. Insurers who are not limited apportionment companies pay the regular assessment within 30 days of levy, so their net worth is not impacted as much by the accounting principles. Citizens' emergency assessments are treated the same under statutory and GAAP accounting and are not a direct charge to an insurer's surplus, thus do not impact an insurer's net worth.

Representatives from Citizens state the bill will not have a negative impact on the corporation's ability to timely pay claims in the event of a hurricane that triggers emergency assessments. Because Citizens will no longer collect assessments from insurers within 30 days of a levy and instead will collect assessments as they are paid by policyholders throughout the year, in order to obtain liquidity needed to pay claims in the event of a hurricane, Citizens may issue more pre-event bonds than is currently issued. The bond proceeds would be invested by Citizens and the interest income used to pay the debt service on the bonds. However, if the interest income earned is not enough to pay the debt service, Citizens would use surplus to pay the difference. Surplus is used to pay claims, so if surplus is used for debt service, less is available to pay claims.

Because the bill eliminates the regular assessment for the PLA and CLA, Citizens no longer has a source for a quick influx of cash to pay claims (i.e., regular assessments paid by insurers within 30 days of levy) and may instead obtain cash to pay claims after a hurricane by issuing post-event bonds supported by emergency assessments paid over multiple years. If the Florida Hurricane Catastrophe Fund is also issuing post-event bonds to raise additional funds to pay their claims after a hurricane, then both entities could receive less favorable bonding terms which, in turn, results in higher assessments levied by both entities to support the debt service on the bonds.

D. FISCAL COMMENTS:

Insurers having to prepay regular assessments up front to Citizens could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the regular assessment to Citizens. If an insurer becomes insolvent, it cannot pay the claims filed by its own policyholders and the Florida Insurance Guaranty Fund (FIGA) would likely take over the insurer and pay its claims. To raise funds to pay claims of insolvent insurers, FIGA can levy regular and emergency assessments against property and casualty insurers which are passed through to policyholders to raise funds to pay claims.

¹⁴ Prior to January 1, 2011, insurers were allowed to book an offsetting asset of an account receivable to the direct charge to surplus from a regular assessment when the charge was booked, rather than waiting to book the offsetting asset when the assessment is paid by the insurer.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill and none repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Representatives from the OIR report that some non-admitted property and casualty insurers have cited the requirement that insurers prepay the regular assessment up front to Citizens as the reason they have chosen not to write residential property insurance in Florida.

Representatives from multiple Florida admitted insurance companies assert the requirement that property and casualty insurers with policies subject to the regular assessment prepay the assessment to Citizens up front and subsequently recoup it from their policyholders may delay the ability of some insurers to timely pay claims of their own policyholders.

Allowing Citizens to levy surcharges and assessments upon a projection by the Citizens Board of Governors that a deficit exists in a Citizens account will allow Citizens to begin the process of collecting those levies at an earlier time than under current law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to Citizens Property Insurance
 3 Corporation; amending s. 627.351, F.S.; conforming
 4 cross-references; reducing to 2 percent from 6 percent
 5 the amount of the projected deficit in the coastal
 6 account for the prior calendar year which is recovered
 7 through regular assessments; requiring that remaining
 8 projected deficits in personal and commercial lines
 9 accounts be recovered through emergency assessments
 10 after accounting for the Citizens policyholder
 11 surcharge; requiring the Office of Insurance
 12 Regulation of the Financial Services Commission to
 13 notify assessable insurers and the Florida Surplus
 14 Lines Service Office of the dates assessable insurers
 15 shall collect and pay emergency assessments; removing
 16 reference to recoupment of residual market deficit
 17 assessments; requiring the board of governors to make
 18 a determination that an account has a projected
 19 deficit before it levies a Citizens policy holder
 20 surcharge; requiring that a limited apportionment
 21 company begin collecting regular assessments within 90
 22 days and pay in full within 15 months after the
 23 assessment is levied; authorizing the Office of
 24 Insurance Regulation to assist the Citizens Property
 25 Insurance Corporation in the collection of
 26 assessments; replacing the term "market equalization
 27 surcharge" with the term "policyholder surcharge";
 28 providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential

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57 policies issued by the corporation, or issued by the Residential
 58 Property and Casualty Joint Underwriting Association and renewed
 59 by the corporation, which provides comprehensive, multiperil
 60 coverage on risks that are not located in areas eligible for
 61 coverage by the Florida Windstorm Underwriting Association as
 62 those areas were defined on January 1, 2002, and for policies
 63 that do not provide coverage for the peril of wind on risks that
 64 are located in such areas;

65 (II) A commercial lines account for commercial residential
 66 and commercial nonresidential policies issued by the
 67 corporation, or issued by the Residential Property and Casualty
 68 Joint Underwriting Association and renewed by the corporation,
 69 which provides coverage for basic property perils on risks that
 70 are not located in areas eligible for coverage by the Florida
 71 Windstorm Underwriting Association as those areas were defined
 72 on January 1, 2002, and for policies that do not provide
 73 coverage for the peril of wind on risks that are located in such
 74 areas; and

75 (III) A coastal account for personal residential policies
 76 and commercial residential and commercial nonresidential
 77 property policies issued by the corporation, or transferred to
 78 the corporation, which provides coverage for the peril of wind
 79 on risks that are located in areas eligible for coverage by the
 80 Florida Windstorm Underwriting Association as those areas were
 81 defined on January 1, 2002. The corporation may offer policies
 82 that provide multiperil coverage and the corporation shall
 83 continue to offer policies that provide coverage only for the
 84 peril of wind for risks located in areas eligible for coverage

85 | in the coastal account. In issuing multiperil coverage, the
 86 | corporation may use its approved policy forms and rates for the
 87 | personal lines account. An applicant or insured who is eligible
 88 | to purchase a multiperil policy from the corporation may
 89 | purchase a multiperil policy from an authorized insurer without
 90 | prejudice to the applicant's or insured's eligibility to
 91 | prospectively purchase a policy that provides coverage only for
 92 | the peril of wind from the corporation. An applicant or insured
 93 | who is eligible for a corporation policy that provides coverage
 94 | only for the peril of wind may elect to purchase or retain such
 95 | policy and also purchase or retain coverage excluding wind from
 96 | an authorized insurer without prejudice to the applicant's or
 97 | insured's eligibility to prospectively purchase a policy that
 98 | provides multiperil coverage from the corporation. It is the
 99 | goal of the Legislature that there be an overall average savings
 100 | of 10 percent or more for a policyholder who currently has a
 101 | wind-only policy with the corporation, and an ex-wind policy
 102 | with a voluntary insurer or the corporation, and who obtains a
 103 | multiperil policy from the corporation. It is the intent of the
 104 | Legislature that the offer of multiperil coverage in the coastal
 105 | account be made and implemented in a manner that does not
 106 | adversely affect the tax-exempt status of the corporation or
 107 | creditworthiness of or security for currently outstanding
 108 | financing obligations or credit facilities of the coastal
 109 | account, the personal lines account, or the commercial lines
 110 | account. The coastal account must also include quota share
 111 | primary insurance under subparagraph (c)2. The area eligible for
 112 | coverage under the coastal account also includes the area within

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113 | Port Canaveral, which is bordered on the south by the City of
 114 | Cape Canaveral, bordered on the west by the Banana River, and
 115 | bordered on the north by Federal Government property.

116 | b. The three separate accounts must be maintained as long
 117 | as financing obligations entered into by the Florida Windstorm
 118 | Underwriting Association or Residential Property and Casualty
 119 | Joint Underwriting Association are outstanding, in accordance
 120 | with the terms of the corresponding financing documents. If the
 121 | financing obligations are no longer outstanding, the corporation
 122 | may use a single account for all revenues, assets, liabilities,
 123 | losses, and expenses of the corporation. Consistent with this
 124 | subparagraph and prudent investment policies that minimize the
 125 | cost of carrying debt, the board shall exercise its best efforts
 126 | to retire existing debt or obtain the approval of necessary
 127 | parties to amend the terms of existing debt, so as to structure
 128 | the most efficient plan to consolidate the three separate
 129 | accounts into a single account.

130 | c. Creditors of the Residential Property and Casualty
 131 | Joint Underwriting Association and the accounts specified in
 132 | sub-sub-subparagraphs a.(I) and (II) may have a claim against,
 133 | and recourse to, those accounts and no claim against, or
 134 | recourse to, the account referred to in sub-sub-subparagraph
 135 | a.(III). Creditors of the Florida Windstorm Underwriting
 136 | Association have a claim against, and recourse to, the account
 137 | referred to in sub-sub-subparagraph a.(III) and no claim
 138 | against, or recourse to, the accounts referred to in sub-sub-
 139 | subparagraphs a.(I) and (II).

140 | d. Revenues, assets, liabilities, losses, and expenses not

141 attributable to particular accounts shall be prorated among the
 142 accounts.

143 e. The Legislature finds that the revenues of the
 144 corporation are revenues that are necessary to meet the
 145 requirements set forth in documents authorizing the issuance of
 146 bonds under this subsection.

147 f. ~~No part of~~ The income of the corporation may not inure
 148 to the benefit of any private person.

149 3. With respect to a deficit in an account:

150 a. After accounting for the Citizens policyholder
 151 surcharge imposed under sub-subparagraph i. ~~h.~~, if the remaining
 152 projected deficit incurred in the coastal account in a
 153 particular calendar year:

154 (I) Is not greater than 2 1/2 percent of the aggregate
 155 statewide direct written premium for the subject lines of
 156 business for the prior calendar year, the entire deficit shall
 157 be recovered through regular assessments of assessable insurers
 158 under paragraph (q) and assessable insureds.

159 (II) Exceeds 2 1/2 percent of the aggregate statewide direct
 160 written premium for the subject lines of business for the prior
 161 calendar year, the corporation shall levy regular assessments on
 162 assessable insurers under paragraph (q) and on assessable
 163 insureds in an amount equal to the greater of 2 1/2 percent of the
 164 projected deficit or 2 1/2 percent of the aggregate statewide
 165 direct written premium for the subject lines of business for the
 166 prior calendar year. Any remaining projected deficit shall be
 167 recovered through emergency assessments under sub-subparagraph
 168 d. ~~e.~~

169 b. Each assessable insurer's share of the amount being
 170 assessed under sub-subparagraph a. must be in the proportion
 171 that the assessable insurer's direct written premium for the
 172 subject lines of business for the year preceding the assessment
 173 bears to the aggregate statewide direct written premium for the
 174 subject lines of business for that year. The assessment
 175 percentage applicable to each assessable insured is the ratio of
 176 the amount being assessed under sub-subparagraph a. to the
 177 aggregate statewide direct written premium for the subject lines
 178 of business for the prior year. Assessments levied by the
 179 corporation on assessable insurers under sub-subparagraph a.
 180 must be paid as required by the corporation's plan of operation
 181 and paragraph (q). Assessments levied by the corporation on
 182 assessable insureds under sub-subparagraph a. shall be collected
 183 by the surplus lines agent at the time the surplus lines agent
 184 collects the surplus lines tax required by s. 626.932, and paid
 185 to the Florida Surplus Lines Service Office at the time the
 186 surplus lines agent pays the surplus lines tax to that office.
 187 Upon receipt of regular assessments from surplus lines agents,
 188 the Florida Surplus Lines Service Office shall transfer the
 189 assessments directly to the corporation as determined by the
 190 corporation.

191 c. After accounting for the Citizens policyholder
 192 surcharge imposed under sub-subparagraph i., the remaining
 193 projected deficits in the personal lines account and in the
 194 commercial lines account in a particular calendar year shall be
 195 recovered through emergency assessments under sub-subparagraph
 196 d.

197 ~~d.e.~~ Upon a determination by the board of governors that a
 198 projected deficit in an account exceeds the amount that is
 199 expected to ~~will~~ be recovered through regular assessments under
 200 sub-subparagraph a., plus the amount that is expected to be
 201 recovered through surcharges under sub-subparagraph i. ~~h.~~, the
 202 board, after verification by the office, shall levy emergency
 203 assessments for as many years as necessary to cover the
 204 deficits, to be collected by assessable insurers and the
 205 corporation and collected from assessable insureds upon issuance
 206 or renewal of policies for subject lines of business, excluding
 207 National Flood Insurance policies. The amount collected in a
 208 particular year must be a uniform percentage of that year's
 209 direct written premium for subject lines of business and all
 210 accounts of the corporation, excluding National Flood Insurance
 211 Program policy premiums, as annually determined by the board and
 212 verified by the office. The office shall verify the arithmetic
 213 calculations involved in the board's determination within 30
 214 days after receipt of the information on which the determination
 215 was based. The office shall notify assessable insurers and the
 216 Florida Surplus Lines Service Office of the date on which
 217 assessable insurers shall begin to collect and assessable
 218 insureds shall begin to pay such assessment. The date may be not
 219 less than 90 days after the date the corporation levies
 220 emergency assessments pursuant to this sub-subparagraph.
 221 Notwithstanding any other provision of law, the corporation and
 222 each assessable insurer that writes subject lines of business
 223 shall collect emergency assessments from its policyholders
 224 without such obligation being affected by any credit,

225 | limitation, exemption, or deferment. Emergency assessments
 226 | levied by the corporation on assessable insureds shall be
 227 | collected by the surplus lines agent at the time the surplus
 228 | lines agent collects the surplus lines tax required by s.
 229 | 626.932 and paid to the Florida Surplus Lines Service Office at
 230 | the time the surplus lines agent pays the surplus lines tax to
 231 | that office. The emergency assessments collected shall be
 232 | transferred directly to the corporation on a periodic basis as
 233 | determined by the corporation and held by the corporation solely
 234 | in the applicable account. The aggregate amount of emergency
 235 | assessments levied for an account under this sub-subparagraph in
 236 | any calendar year may be less than but not exceed the greater of
 237 | 10 percent of the amount needed to cover the deficit, plus
 238 | interest, fees, commissions, required reserves, and other costs
 239 | associated with financing the original deficit, or 10 percent of
 240 | the aggregate statewide direct written premium for subject lines
 241 | of business and all accounts of the corporation for the prior
 242 | year, plus interest, fees, commissions, required reserves, and
 243 | other costs associated with financing the deficit.

244 | ~~e.d.~~ The corporation may pledge the proceeds of
 245 | assessments, projected recoveries from the Florida Hurricane
 246 | Catastrophe Fund, other insurance and reinsurance recoverables,
 247 | policyholder surcharges and other surcharges, and other funds
 248 | available to the corporation as the source of revenue for and to
 249 | secure bonds issued under paragraph (q), bonds or other
 250 | indebtedness issued under subparagraph (c)3., or lines of credit
 251 | or other financing mechanisms issued or created under this
 252 | subsection, or to retire any other debt incurred as a result of

253 | deficits or events giving rise to deficits, or in any other way
 254 | that the board determines will efficiently recover such
 255 | deficits. The purpose of the lines of credit or other financing
 256 | mechanisms is to provide additional resources to assist the
 257 | corporation in covering claims and expenses attributable to a
 258 | catastrophe. As used in this subsection, the term "assessments"
 259 | includes regular assessments under sub-subparagraph a. or
 260 | subparagraph (q)1. and emergency assessments under sub-
 261 | subparagraph d. Emergency assessments collected under sub-
 262 | subparagraph d. are not part of an insurer's rates, are not
 263 | premium, and are not subject to premium tax, fees, or
 264 | commissions; however, failure to pay the emergency assessment
 265 | shall be treated as failure to pay premium. The emergency
 266 | assessments under sub-subparagraph d. ~~e.~~ shall continue as long
 267 | as any bonds issued or other indebtedness incurred with respect
 268 | to a deficit for which the assessment was imposed remain
 269 | outstanding, unless adequate provision has been made for the
 270 | payment of such bonds or other indebtedness pursuant to the
 271 | documents governing such bonds or indebtedness.

272 | f.e. As used in this subsection for purposes of any
 273 | deficit incurred on or after January 25, 2007, the term "subject
 274 | lines of business" means insurance written by assessable
 275 | insurers or procured by assessable insureds for all property and
 276 | casualty lines of business in this state, but not including
 277 | workers' compensation or medical malpractice. As used in this
 278 | sub-subparagraph, the term "property and casualty lines of
 279 | business" includes all lines of business identified on Form 2,
 280 | Exhibit of Premiums and Losses, in the annual statement required

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281 of authorized insurers under s. 624.424 and any rule adopted
 282 under this section, except for those lines identified as
 283 accident and health insurance and except for policies written
 284 under the National Flood Insurance Program or the Federal Crop
 285 Insurance Program. For purposes of this sub-subparagraph, the
 286 term "workers' compensation" includes both workers' compensation
 287 insurance and excess workers' compensation insurance.

288 g.f. The Florida Surplus Lines Service Office shall
 289 determine annually the aggregate statewide written premium in
 290 subject lines of business procured by assessable insureds and
 291 report that information to the corporation in a form and at a
 292 time the corporation specifies to ensure that the corporation
 293 can meet the requirements of this subsection and the
 294 corporation's financing obligations.

295 h.g. The Florida Surplus Lines Service Office shall verify
 296 the proper application by surplus lines agents of assessment
 297 percentages for regular assessments and emergency assessments
 298 levied under this subparagraph on assessable insureds and assist
 299 the corporation in ensuring the accurate, timely collection and
 300 payment of assessments by surplus lines agents as required by
 301 the corporation.

302 i.h. ~~If a deficit is incurred in any account~~ In 2008 or
 303 thereafter, upon a determination by the board of governors that
 304 an account has a projected deficit, the board shall levy a
 305 Citizens policyholder surcharge against all policyholders of the
 306 corporation.

307 (I) The surcharge shall be levied as a uniform percentage
 308 of the premium for the policy of up to 15 percent of such

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309 premium, which funds shall be used to offset the deficit.

310 (II) The surcharge is payable upon cancellation or
 311 termination of the policy, upon renewal of the policy, or upon
 312 issuance of a new policy by the corporation within the first 12
 313 months after the date of the levy or the period of time
 314 necessary to fully collect the surcharge amount.

315 (III) The corporation may not levy any regular assessments
 316 under paragraph (q) pursuant to sub-subparagraph a. or sub-
 317 subparagraph b. with respect to a particular year's deficit
 318 until the corporation has first levied the full amount of the
 319 surcharge authorized by this sub-subparagraph.

320 (IV) The surcharge is not considered premium and is not
 321 subject to commissions, fees, or premium taxes. However, failure
 322 to pay the surcharge shall be treated as failure to pay premium.

323 ~~j.i.~~ If the amount of any assessments or surcharges
 324 collected from corporation policyholders, assessable insurers or
 325 their policyholders, or assessable insureds exceeds the amount
 326 of the deficits, such excess amounts shall be remitted to and
 327 retained by the corporation in a reserve to be used by the
 328 corporation, as determined by the board of governors and
 329 approved by the office, to pay claims or reduce any past,
 330 present, or future plan-year deficits or to reduce outstanding
 331 debt.

332 (c) The corporation's plan of operation:

333 1. Must provide for adoption of residential property and
 334 casualty insurance policy forms and commercial residential and
 335 nonresidential property insurance forms, which must be approved
 336 by the office before use. The corporation shall adopt the

337 following policy forms:

338 a. Standard personal lines policy forms that are
 339 comprehensive multiperil policies providing full coverage of a
 340 residential property equivalent to the coverage provided in the
 341 private insurance market under an HO-3, HO-4, or HO-6 policy.

342 b. Basic personal lines policy forms that are policies
 343 similar to an HO-8 policy or a dwelling fire policy that provide
 344 coverage meeting the requirements of the secondary mortgage
 345 market, but which is more limited than the coverage under a
 346 standard policy.

347 c. Commercial lines residential and nonresidential policy
 348 forms that are generally similar to the basic perils of full
 349 coverage obtainable for commercial residential structures and
 350 commercial nonresidential structures in the admitted voluntary
 351 market.

352 d. Personal lines and commercial lines residential
 353 property insurance forms that cover the peril of wind only. The
 354 forms are applicable only to residential properties located in
 355 areas eligible for coverage under the coastal account referred
 356 to in sub-subparagraph (b)2.a.

357 e. Commercial lines nonresidential property insurance
 358 forms that cover the peril of wind only. The forms are
 359 applicable only to nonresidential properties located in areas
 360 eligible for coverage under the coastal account referred to in
 361 sub-subparagraph (b)2.a.

362 f. The corporation may adopt variations of the policy
 363 forms listed in sub-subparagraphs a.-e. which contain more
 364 restrictive coverage.

365 2. Must provide that the corporation adopt a program in
 366 which the corporation and authorized insurers enter into quota
 367 share primary insurance agreements for hurricane coverage, as
 368 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 369 property insurance forms for eligible risks which cover the
 370 peril of wind only.

371 a. As used in this subsection, the term:

372 (I) "Quota share primary insurance" means an arrangement
 373 in which the primary hurricane coverage of an eligible risk is
 374 provided in specified percentages by the corporation and an
 375 authorized insurer. The corporation and authorized insurer are
 376 each solely responsible for a specified percentage of hurricane
 377 coverage of an eligible risk as set forth in a quota share
 378 primary insurance agreement between the corporation and an
 379 authorized insurer and the insurance contract. The
 380 responsibility of the corporation or authorized insurer to pay
 381 its specified percentage of hurricane losses of an eligible
 382 risk, as set forth in the agreement, may not be altered by the
 383 inability of the other party to pay its specified percentage of
 384 losses. Eligible risks that are provided hurricane coverage
 385 through a quota share primary insurance arrangement must be
 386 provided policy forms that set forth the obligations of the
 387 corporation and authorized insurer under the arrangement,
 388 clearly specify the percentages of quota share primary insurance
 389 provided by the corporation and authorized insurer, and
 390 conspicuously and clearly state that the authorized insurer and
 391 the corporation may not be held responsible beyond their
 392 specified percentage of coverage of hurricane losses.

393 (II) "Eligible risks" means personal lines residential and
 394 commercial lines residential risks that meet the underwriting
 395 criteria of the corporation and are located in areas that were
 396 eligible for coverage by the Florida Windstorm Underwriting
 397 Association on January 1, 2002.

398 b. The corporation may enter into quota share primary
 399 insurance agreements with authorized insurers at corporation
 400 coverage levels of 90 percent and 50 percent.

401 c. If the corporation determines that additional coverage
 402 levels are necessary to maximize participation in quota share
 403 primary insurance agreements by authorized insurers, the
 404 corporation may establish additional coverage levels. However,
 405 the corporation's quota share primary insurance coverage level
 406 may not exceed 90 percent.

407 d. Any quota share primary insurance agreement entered
 408 into between an authorized insurer and the corporation must
 409 provide for a uniform specified percentage of coverage of
 410 hurricane losses, by county or territory as set forth by the
 411 corporation board, for all eligible risks of the authorized
 412 insurer covered under the agreement.

413 e. Any quota share primary insurance agreement entered
 414 into between an authorized insurer and the corporation is
 415 subject to review and approval by the office. However, such
 416 agreement shall be authorized only as to insurance contracts
 417 entered into between an authorized insurer and an insured who is
 418 already insured by the corporation for wind coverage.

419 f. For all eligible risks covered under quota share
 420 primary insurance agreements, the exposure and coverage levels

421 | for both the corporation and authorized insurers shall be
 422 | reported by the corporation to the Florida Hurricane Catastrophe
 423 | Fund. For all policies of eligible risks covered under such
 424 | agreements, the corporation and the authorized insurer must
 425 | maintain complete and accurate records for the purpose of
 426 | exposure and loss reimbursement audits as required by fund
 427 | rules. The corporation and the authorized insurer shall each
 428 | maintain duplicate copies of policy declaration pages and
 429 | supporting claims documents.

430 | g. The corporation board shall establish in its plan of
 431 | operation standards for quota share agreements which ensure that
 432 | there is no discriminatory application among insurers as to the
 433 | terms of the agreements, pricing of the agreements, incentive
 434 | provisions if any, and consideration paid for servicing policies
 435 | or adjusting claims.

436 | h. The quota share primary insurance agreement between the
 437 | corporation and an authorized insurer must set forth the
 438 | specific terms under which coverage is provided, including, but
 439 | not limited to, the sale and servicing of policies issued under
 440 | the agreement by the insurance agent of the authorized insurer
 441 | producing the business, the reporting of information concerning
 442 | eligible risks, the payment of premium to the corporation, and
 443 | arrangements for the adjustment and payment of hurricane claims
 444 | incurred on eligible risks by the claims adjuster and personnel
 445 | of the authorized insurer. Entering into a quota sharing
 446 | insurance agreement between the corporation and an authorized
 447 | insurer is voluntary and at the discretion of the authorized
 448 | insurer.

449 3.a. May provide that the corporation may employ or
 450 otherwise contract with individuals or other entities to provide
 451 administrative or professional services that may be appropriate
 452 to effectuate the plan. The corporation may borrow funds by
 453 issuing bonds or by incurring other indebtedness, and shall have
 454 other powers reasonably necessary to effectuate the requirements
 455 of this subsection, including, without limitation, the power to
 456 issue bonds and incur other indebtedness in order to refinance
 457 outstanding bonds or other indebtedness. The corporation may
 458 seek judicial validation of its bonds or other indebtedness
 459 under chapter 75. The corporation may issue bonds or incur other
 460 indebtedness, or have bonds issued on its behalf by a unit of
 461 local government pursuant to subparagraph (q)2. in the absence
 462 of a hurricane or other weather-related event, upon a
 463 determination by the corporation, subject to approval by the
 464 office, that such action would enable it to efficiently meet the
 465 financial obligations of the corporation and that such
 466 financings are reasonably necessary to effectuate the
 467 requirements of this subsection. The corporation may take all
 468 actions needed to facilitate tax-free status for such bonds or
 469 indebtedness, including formation of trusts or other affiliated
 470 entities. The corporation may pledge assessments, projected
 471 recoveries from the Florida Hurricane Catastrophe Fund, other
 472 reinsurance recoverables, policyholder surcharges ~~market~~
 473 ~~equalization~~ and other surcharges, and other funds available to
 474 the corporation as security for bonds or other indebtedness. In
 475 recognition of s. 10, Art. I of the State Constitution,
 476 prohibiting the impairment of obligations of contracts, it is

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477 the intent of the Legislature that no action be taken whose
478 purpose is to impair any bond indenture or financing agreement
479 or any revenue source committed by contract to such bond or
480 other indebtedness.

481 b. To ensure that the corporation is operating in an
482 efficient and economic manner while providing quality service to
483 policyholders, applicants, and agents, the board shall
484 commission an independent third-party consultant having
485 expertise in insurance company management or insurance company
486 management consulting to prepare a report and make
487 recommendations on the relative costs and benefits of
488 outsourcing various policy issuance and service functions to
489 private servicing carriers or entities performing similar
490 functions in the private market for a fee, rather than
491 performing such functions in-house. In making such
492 recommendations, the consultant shall consider how other
493 residual markets, both in this state and around the country,
494 outsource appropriate functions or use servicing carriers to
495 better match expenses with revenues that fluctuate based on a
496 widely varying policy count. The report must be completed by
497 July 1, 2012. Upon receiving the report, the board shall develop
498 a plan to implement the report and submit the plan for review,
499 modification, and approval to the Financial Services Commission.
500 Upon the commission's approval of the plan, the board shall
501 begin implementing the plan by January 1, 2013.

502 4. Must require that the corporation operate subject to
503 the supervision and approval of a board of governors consisting
504 of eight individuals who are residents of this state, from

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505 | different geographical areas of this state.

506 | a. The Governor, the Chief Financial Officer, the
507 | President of the Senate, and the Speaker of the House of
508 | Representatives shall each appoint two members of the board. At
509 | least one of the two members appointed by each appointing
510 | officer must have demonstrated expertise in insurance and is
511 | deemed to be within the scope of the exemption provided in s.
512 | 112.313(7)(b). The Chief Financial Officer shall designate one
513 | of the appointees as chair. All board members serve at the
514 | pleasure of the appointing officer. All members of the board are
515 | subject to removal at will by the officers who appointed them.
516 | All board members, including the chair, must be appointed to
517 | serve for 3-year terms beginning annually on a date designated
518 | by the plan. However, for the first term beginning on or after
519 | July 1, 2009, each appointing officer shall appoint one member
520 | of the board for a 2-year term and one member for a 3-year term.
521 | A board vacancy shall be filled for the unexpired term by the
522 | appointing officer. The Chief Financial Officer shall appoint a
523 | technical advisory group to provide information and advice to
524 | the board in connection with the board's duties under this
525 | subsection. The executive director and senior managers of the
526 | corporation shall be engaged by the board and serve at the
527 | pleasure of the board. Any executive director appointed on or
528 | after July 1, 2006, is subject to confirmation by the Senate.
529 | The executive director is responsible for employing other staff
530 | as the corporation may require, subject to review and
531 | concurrence by the board.

532 | b. The board shall create a Market Accountability Advisory

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533 Committee to assist the corporation in developing awareness of
 534 its rates and its customer and agent service levels in
 535 relationship to the voluntary market insurers writing similar
 536 coverage.

537 (I) The members of the advisory committee consist of the
 538 following 11 persons, one of whom must be elected chair by the
 539 members of the committee: four representatives, one appointed by
 540 the Florida Association of Insurance Agents, one by the Florida
 541 Association of Insurance and Financial Advisors, one by the
 542 Professional Insurance Agents of Florida, and one by the Latin
 543 American Association of Insurance Agencies; three
 544 representatives appointed by the insurers with the three highest
 545 voluntary market share of residential property insurance
 546 business in the state; one representative from the Office of
 547 Insurance Regulation; one consumer appointed by the board who is
 548 insured by the corporation at the time of appointment to the
 549 committee; one representative appointed by the Florida
 550 Association of Realtors; and one representative appointed by the
 551 Florida Bankers Association. All members shall be appointed to
 552 3-year terms and may serve for consecutive terms.

553 (II) The committee shall report to the corporation at each
 554 board meeting on insurance market issues which may include rates
 555 and rate competition with the voluntary market; service,
 556 including policy issuance, claims processing, and general
 557 responsiveness to policyholders, applicants, and agents; and
 558 matters relating to depopulation.

559 5. Must provide a procedure for determining the
 560 eligibility of a risk for coverage, as follows:

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561 a. Subject to s. 627.3517, with respect to personal lines
562 residential risks, if the risk is offered coverage from an
563 authorized insurer at the insurer's approved rate under a
564 standard policy including wind coverage or, if consistent with
565 the insurer's underwriting rules as filed with the office, a
566 basic policy including wind coverage, for a new application to
567 the corporation for coverage, the risk is not eligible for any
568 policy issued by the corporation unless the premium for coverage
569 from the authorized insurer is more than 15 percent greater than
570 the premium for comparable coverage from the corporation. If the
571 risk is not able to obtain such offer, the risk is eligible for
572 a standard policy including wind coverage or a basic policy
573 including wind coverage issued by the corporation; however, if
574 the risk could not be insured under a standard policy including
575 wind coverage regardless of market conditions, the risk is
576 eligible for a basic policy including wind coverage unless
577 rejected under subparagraph 8. However, a policyholder of the
578 corporation or a policyholder removed from the corporation
579 through an assumption agreement until the end of the assumption
580 period remains eligible for coverage from the corporation
581 regardless of any offer of coverage from an authorized insurer
582 or surplus lines insurer. The corporation shall determine the
583 type of policy to be provided on the basis of objective
584 standards specified in the underwriting manual and based on
585 generally accepted underwriting practices.

586 (I) If the risk accepts an offer of coverage through the
587 market assistance plan or through a mechanism established by the
588 corporation before a policy is issued to the risk by the

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589 corporation or during the first 30 days of coverage by the
 590 corporation, and the producing agent who submitted the
 591 application to the plan or to the corporation is not currently
 592 appointed by the insurer, the insurer shall:

593 (A) Pay to the producing agent of record of the policy for
 594 the first year, an amount that is the greater of the insurer's
 595 usual and customary commission for the type of policy written or
 596 a fee equal to the usual and customary commission of the
 597 corporation; or

598 (B) Offer to allow the producing agent of record of the
 599 policy to continue servicing the policy for at least 1 year and
 600 offer to pay the agent the greater of the insurer's or the
 601 corporation's usual and customary commission for the type of
 602 policy written.

603

604 If the producing agent is unwilling or unable to accept
 605 appointment, the new insurer shall pay the agent in accordance
 606 with sub-sub-sub-subparagraph (A).

607 (II) If the corporation enters into a contractual
 608 agreement for a take-out plan, the producing agent of record of
 609 the corporation policy is entitled to retain any unearned
 610 commission on the policy, and the insurer shall:

611 (A) Pay to the producing agent of record, for the first
 612 year, an amount that is the greater of the insurer's usual and
 613 customary commission for the type of policy written or a fee
 614 equal to the usual and customary commission of the corporation;
 615 or

616 (B) Offer to allow the producing agent of record to

617 | continue servicing the policy for at least 1 year and offer to
 618 | pay the agent the greater of the insurer's or the corporation's
 619 | usual and customary commission for the type of policy written.

620 |
 621 | If the producing agent is unwilling or unable to accept
 622 | appointment, the new insurer shall pay the agent in accordance
 623 | with sub-sub-sub-subparagraph (A).

624 | b. With respect to commercial lines residential risks, for
 625 | a new application to the corporation for coverage, if the risk
 626 | is offered coverage under a policy including wind coverage from
 627 | an authorized insurer at its approved rate, the risk is not
 628 | eligible for a policy issued by the corporation unless the
 629 | premium for coverage from the authorized insurer is more than 15
 630 | percent greater than the premium for comparable coverage from
 631 | the corporation. If the risk is not able to obtain any such
 632 | offer, the risk is eligible for a policy including wind coverage
 633 | issued by the corporation. However, a policyholder of the
 634 | corporation or a policyholder removed from the corporation
 635 | through an assumption agreement until the end of the assumption
 636 | period remains eligible for coverage from the corporation
 637 | regardless of an offer of coverage from an authorized insurer or
 638 | surplus lines insurer.

639 | (I) If the risk accepts an offer of coverage through the
 640 | market assistance plan or through a mechanism established by the
 641 | corporation before a policy is issued to the risk by the
 642 | corporation or during the first 30 days of coverage by the
 643 | corporation, and the producing agent who submitted the
 644 | application to the plan or the corporation is not currently

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645 appointed by the insurer, the insurer shall:

646 (A) Pay to the producing agent of record of the policy,
 647 for the first year, an amount that is the greater of the
 648 insurer's usual and customary commission for the type of policy
 649 written or a fee equal to the usual and customary commission of
 650 the corporation; or

651 (B) Offer to allow the producing agent of record of the
 652 policy to continue servicing the policy for at least 1 year and
 653 offer to pay the agent the greater of the insurer's or the
 654 corporation's usual and customary commission for the type of
 655 policy written.

656
 657 If the producing agent is unwilling or unable to accept
 658 appointment, the new insurer shall pay the agent in accordance
 659 with sub-sub-sub-subparagraph (A).

660 (II) If the corporation enters into a contractual
 661 agreement for a take-out plan, the producing agent of record of
 662 the corporation policy is entitled to retain any unearned
 663 commission on the policy, and the insurer shall:

664 (A) Pay to the producing agent of record, for the first
 665 year, an amount that is the greater of the insurer's usual and
 666 customary commission for the type of policy written or a fee
 667 equal to the usual and customary commission of the corporation;
 668 or

669 (B) Offer to allow the producing agent of record to
 670 continue servicing the policy for at least 1 year and offer to
 671 pay the agent the greater of the insurer's or the corporation's
 672 usual and customary commission for the type of policy written.

673
 674 If the producing agent is unwilling or unable to accept
 675 appointment, the new insurer shall pay the agent in accordance
 676 with sub-sub-sub-subparagraph (A).

677 c. For purposes of determining comparable coverage under
 678 sub-subparagraphs a. and b., the comparison must be based on
 679 those forms and coverages that are reasonably comparable. The
 680 corporation may rely on a determination of comparable coverage
 681 and premium made by the producing agent who submits the
 682 application to the corporation, made in the agent's capacity as
 683 the corporation's agent. A comparison may be made solely of the
 684 premium with respect to the main building or structure only on
 685 the following basis: the same coverage A or other building
 686 limits; the same percentage hurricane deductible that applies on
 687 an annual basis or that applies to each hurricane for commercial
 688 residential property; the same percentage of ordinance and law
 689 coverage, if the same limit is offered by both the corporation
 690 and the authorized insurer; the same mitigation credits, to the
 691 extent the same types of credits are offered both by the
 692 corporation and the authorized insurer; the same method for loss
 693 payment, such as replacement cost or actual cash value, if the
 694 same method is offered both by the corporation and the
 695 authorized insurer in accordance with underwriting rules; and
 696 any other form or coverage that is reasonably comparable as
 697 determined by the board. If an application is submitted to the
 698 corporation for wind-only coverage in the coastal account, the
 699 premium for the corporation's wind-only policy plus the premium
 700 for the ex-wind policy that is offered by an authorized insurer

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701 to the applicant must be compared to the premium for multiperil
 702 coverage offered by an authorized insurer, subject to the
 703 standards for comparison specified in this subparagraph. If the
 704 corporation or the applicant requests from the authorized
 705 insurer a breakdown of the premium of the offer by types of
 706 coverage so that a comparison may be made by the corporation or
 707 its agent and the authorized insurer refuses or is unable to
 708 provide such information, the corporation may treat the offer as
 709 not being an offer of coverage from an authorized insurer at the
 710 insurer's approved rate.

711 6. Must include rules for classifications of risks and
 712 rates.

713 7. Must provide that if premium and investment income for
 714 an account attributable to a particular calendar year are in
 715 excess of projected losses and expenses for the account
 716 attributable to that year, such excess shall be held in surplus
 717 in the account. Such surplus must be available to defray
 718 deficits in that account as to future years and used for that
 719 purpose before assessing assessable insurers and assessable
 720 insureds as to any calendar year.

721 8. Must provide objective criteria and procedures to be
 722 uniformly applied to all applicants in determining whether an
 723 individual risk is so hazardous as to be uninsurable. In making
 724 this determination and in establishing the criteria and
 725 procedures, the following must be considered:

726 a. Whether the likelihood of a loss for the individual
 727 risk is substantially higher than for other risks of the same
 728 class; and

729 b. Whether the uncertainty associated with the individual
730 risk is such that an appropriate premium cannot be determined.

731
732 The acceptance or rejection of a risk by the corporation shall
733 be construed as the private placement of insurance, and the
734 provisions of chapter 120 do not apply.

735 9. Must provide that the corporation make its best efforts
736 to procure catastrophe reinsurance at reasonable rates, to cover
737 its projected 100-year probable maximum loss as determined by
738 the board of governors.

739 10. The policies issued by the corporation must provide
740 that if the corporation or the market assistance plan obtains an
741 offer from an authorized insurer to cover the risk at its
742 approved rates, the risk is no longer eligible for renewal
743 through the corporation, except as otherwise provided in this
744 subsection.

745 11. Corporation policies and applications must include a
746 notice that the corporation policy could, under this section, be
747 replaced with a policy issued by an authorized insurer which
748 does not provide coverage identical to the coverage provided by
749 the corporation. The notice must also specify that acceptance of
750 corporation coverage creates a conclusive presumption that the
751 applicant or policyholder is aware of this potential.

752 12. May establish, subject to approval by the office,
753 different eligibility requirements and operational procedures
754 for any line or type of coverage for any specified county or
755 area if the board determines that such changes are justified due
756 to the voluntary market being sufficiently stable and

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757 competitive in such area or for such line or type of coverage
 758 and that consumers who, in good faith, are unable to obtain
 759 insurance through the voluntary market through ordinary methods
 760 continue to have access to coverage from the corporation. If
 761 coverage is sought in connection with a real property transfer,
 762 the requirements and procedures may not provide an effective
 763 date of coverage later than the date of the closing of the
 764 transfer as established by the transferor, the transferee, and,
 765 if applicable, the lender.

766 13. Must provide that, with respect to the coastal
 767 account, any assessable insurer with a surplus as to
 768 policyholders of \$25 million or less writing 25 percent or more
 769 of its total countrywide property insurance premiums in this
 770 state may petition the office, within the first 90 days of each
 771 calendar year, to qualify as a limited apportionment company. A
 772 regular assessment levied by the corporation on a limited
 773 apportionment company for a deficit incurred by the corporation
 774 for the coastal account may be paid to the corporation on a
 775 monthly basis as the assessments are collected by the limited
 776 apportionment company from its insureds ~~pursuant to s. 627.3512,~~
 777 but a limited apportionment company must begin collecting the
 778 regular assessments not later than 90 days after the regular
 779 assessments are levied by the corporation, and the regular
 780 assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months
 781 after being levied by the corporation. A limited apportionment
 782 company shall collect from its policyholders any emergency
 783 assessment imposed under sub-subparagraph (b)3.d. The plan must
 784 provide that, if the office determines that any regular

785 assessment will result in an impairment of the surplus of a
 786 limited apportionment company, the office may direct that all or
 787 part of such assessment be deferred as provided in subparagraph
 788 (q)4. However, an emergency assessment to be collected from
 789 policyholders under sub-subparagraph (b)3.d. may not be limited
 790 or deferred.

791 14. Must provide that the corporation appoint as its
 792 licensed agents only those agents who also hold an appointment
 793 as defined in s. 626.015(3) with an insurer who at the time of
 794 the agent's initial appointment by the corporation is authorized
 795 to write and is actually writing personal lines residential
 796 property coverage, commercial residential property coverage, or
 797 commercial nonresidential property coverage within the state.

798 15. Must provide a premium payment plan option to its
 799 policyholders which, at a minimum, allows for quarterly and
 800 semiannual payment of premiums. A monthly payment plan may, but
 801 is not required to, be offered.

802 16. Must limit coverage on mobile homes or manufactured
 803 homes built before 1994 to actual cash value of the dwelling
 804 rather than replacement costs of the dwelling.

805 17. May provide such limits of coverage as the board
 806 determines, consistent with the requirements of this subsection.

807 18. May require commercial property to meet specified
 808 hurricane mitigation construction features as a condition of
 809 eligibility for coverage.

810 19. Must provide that new or renewal policies issued by
 811 the corporation on or after January 1, 2012, which cover
 812 sinkhole loss do not include coverage for any loss to

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813 appurtenant structures, driveways, sidewalks, decks, or patios
 814 that are directly or indirectly caused by sinkhole activity. The
 815 corporation shall exclude such coverage using a notice of
 816 coverage change, which may be included with the policy renewal,
 817 and not by issuance of a notice of nonrenewal of the excluded
 818 coverage upon renewal of the current policy.

819 20. As of January 1, 2012, must require that the agent
 820 obtain from an applicant for coverage from the corporation an
 821 acknowledgement signed by the applicant, which includes, at a
 822 minimum, the following statement:

823
 824 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
 825 AND ASSESSMENT LIABILITY:
 826

827 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 828 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 829 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
 830 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 831 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 832 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 833 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 834 LEGISLATURE.

835 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 836 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 837 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 838 FLORIDA LEGISLATURE.

839 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 840 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE

841 STATE OF FLORIDA.

842

843 a. The corporation shall maintain, in electronic format or
 844 otherwise, a copy of the applicant's signed acknowledgement and
 845 provide a copy of the statement to the policyholder as part of
 846 the first renewal after the effective date of this subparagraph.

847 b. The signed acknowledgement form creates a conclusive
 848 presumption that the policyholder understood and accepted his or
 849 her potential surcharge and assessment liability as a
 850 policyholder of the corporation.

851 (q)1. The corporation shall certify to the office its
 852 needs for annual assessments as to a particular calendar year,
 853 and for any interim assessments that it deems to be necessary to
 854 sustain operations as to a particular year pending the receipt
 855 of annual assessments. Upon verification, the office shall
 856 approve such certification, and the corporation shall levy such
 857 annual or interim assessments. Such assessments shall be
 858 prorated as provided in paragraph (b). The corporation shall
 859 take all reasonable and prudent steps necessary to collect the
 860 amount of assessments ~~assessment~~ due from each assessable
 861 insurer, including, if prudent, filing suit to collect the
 862 assessments, and the office may provide such assistance to the
 863 corporation it deems appropriate ~~such assessment~~. If the
 864 corporation is unable to collect an assessment from any
 865 assessable insurer, the uncollected assessments shall be levied
 866 as an additional assessment against the assessable insurers and
 867 any assessable insurer required to pay an additional assessment
 868 as a result of such failure to pay shall have a cause of action

869 against such nonpaying assessable insurer. Assessments shall be
 870 included as an appropriate factor in the making of rates. The
 871 failure of a surplus lines agent to collect and remit any
 872 regular or emergency assessment levied by the corporation is
 873 considered to be a violation of s. 626.936 and subjects the
 874 surplus lines agent to the penalties provided in that section.

875 2. The governing body of any unit of local government, any
 876 residents of which are insured by the corporation, may issue
 877 bonds as defined in s. 125.013 or s. 166.101 from time to time
 878 to fund an assistance program, in conjunction with the
 879 corporation, for the purpose of defraying deficits of the
 880 corporation. In order to avoid needless and indiscriminate
 881 proliferation, duplication, and fragmentation of such assistance
 882 programs, any unit of local government, any residents of which
 883 are insured by the corporation, may provide for the payment of
 884 losses, regardless of whether or not the losses occurred within
 885 or outside of the territorial jurisdiction of the local
 886 government. Revenue bonds under this subparagraph may not be
 887 issued until validated pursuant to chapter 75, unless a state of
 888 emergency is declared by executive order or proclamation of the
 889 Governor pursuant to s. 252.36 making such findings as are
 890 necessary to determine that it is in the best interests of, and
 891 necessary for, the protection of the public health, safety, and
 892 general welfare of residents of this state and declaring it an
 893 essential public purpose to permit certain municipalities or
 894 counties to issue such bonds as will permit relief to claimants
 895 and policyholders of the corporation. Any such unit of local
 896 government may enter into such contracts with the corporation

897 and with any other entity created pursuant to this subsection as
 898 are necessary to carry out this paragraph. Any bonds issued
 899 under this subparagraph shall be payable from and secured by
 900 moneys received by the corporation from emergency assessments
 901 under sub-subparagraph (b)3.d., and assigned and pledged to or
 902 on behalf of the unit of local government for the benefit of the
 903 holders of such bonds. The funds, credit, property, and taxing
 904 power of the state or of the unit of local government shall not
 905 be pledged for the payment of such bonds.

906 3.a. The corporation shall adopt one or more programs
 907 subject to approval by the office for the reduction of both new
 908 and renewal writings in the corporation. Beginning January 1,
 909 2008, any program the corporation adopts for the payment of
 910 bonuses to an insurer for each risk the insurer removes from the
 911 corporation shall comply with s. 627.3511(2) and may not exceed
 912 the amount referenced in s. 627.3511(2) for each risk removed.
 913 The corporation may consider any prudent and not unfairly
 914 discriminatory approach to reducing corporation writings, and
 915 may adopt a credit against assessment liability or other
 916 liability that provides an incentive for insurers to take risks
 917 out of the corporation and to keep risks out of the corporation
 918 by maintaining or increasing voluntary writings in counties or
 919 areas in which corporation risks are highly concentrated and a
 920 program to provide a formula under which an insurer voluntarily
 921 taking risks out of the corporation by maintaining or increasing
 922 voluntary writings will be relieved wholly or partially from
 923 assessments under sub-subparagraphs (b)3.a. and b. However, any
 924 "take-out bonus" or payment to an insurer must be conditioned on

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925 the property being insured for at least 5 years by the insurer,
 926 unless canceled or nonrenewed by the policyholder. If the policy
 927 is canceled or nonrenewed by the policyholder before the end of
 928 the 5-year period, the amount of the take-out bonus must be
 929 prorated for the time period the policy was insured. When the
 930 corporation enters into a contractual agreement for a take-out
 931 plan, the producing agent of record of the corporation policy is
 932 entitled to retain any unearned commission on such policy, and
 933 the insurer shall either:

934 (I) Pay to the producing agent of record of the policy,
 935 for the first year, an amount which is the greater of the
 936 insurer's usual and customary commission for the type of policy
 937 written or a policy fee equal to the usual and customary
 938 commission of the corporation; or

939 (II) Offer to allow the producing agent of record of the
 940 policy to continue servicing the policy for a period of not less
 941 than 1 year and offer to pay the agent the insurer's usual and
 942 customary commission for the type of policy written. If the
 943 producing agent is unwilling or unable to accept appointment by
 944 the new insurer, the new insurer shall pay the agent in
 945 accordance with sub-sub-subparagraph (I).

946 b. Any credit or exemption from regular assessments
 947 adopted under this subparagraph shall last no longer than the 3
 948 years following the cancellation or expiration of the policy by
 949 the corporation. With the approval of the office, the board may
 950 extend such credits for an additional year if the insurer
 951 guarantees an additional year of renewability for all policies
 952 removed from the corporation, or for 2 additional years if the

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953 insurer guarantees 2 additional years of renewability for all
 954 policies so removed.

955 c. There shall be no credit, limitation, exemption, or
 956 deferment from emergency assessments to be collected from
 957 policyholders pursuant to sub-subparagraph (b)3.d.

958 4. The plan shall provide for the deferment, in whole or
 959 in part, of the assessment of an assessable insurer, other than
 960 an emergency assessment collected from policyholders pursuant to
 961 sub-subparagraph (b)3.d., if the office finds that payment of
 962 the assessment would endanger or impair the solvency of the
 963 insurer. In the event an assessment against an assessable
 964 insurer is deferred in whole or in part, the amount by which
 965 such assessment is deferred may be assessed against the other
 966 assessable insurers in a manner consistent with the basis for
 967 assessments set forth in paragraph (b).

968 5. Effective July 1, 2007, in order to evaluate the costs
 969 and benefits of approved take-out plans, if the corporation pays
 970 a bonus or other payment to an insurer for an approved take-out
 971 plan, it shall maintain a record of the address or such other
 972 identifying information on the property or risk removed in order
 973 to track if and when the property or risk is later insured by
 974 the corporation.

975 6. Any policy taken out, assumed, or removed from the
 976 corporation is, as of the effective date of the take-out,
 977 assumption, or removal, direct insurance issued by the insurer
 978 and not by the corporation, even if the corporation continues to
 979 service the policies. This subparagraph applies to policies of
 980 the corporation and not policies taken out, assumed, or removed

981 from any other entity.

982 (w) Notwithstanding any other provision of law:

983 1. The pledge or sale of, the lien upon, and the security
 984 interest in any rights, revenues, or other assets of the
 985 corporation created or purported to be created pursuant to any
 986 financing documents to secure any bonds or other indebtedness of
 987 the corporation shall be and remain valid and enforceable,
 988 notwithstanding the commencement of and during the continuation
 989 of, and after, any rehabilitation, insolvency, liquidation,
 990 bankruptcy, receivership, conservatorship, reorganization, or
 991 similar proceeding against the corporation under the laws of
 992 this state.

993 2. The ~~No such~~ proceeding does not shall relieve the
 994 corporation of its obligation, or otherwise affect its ability
 995 to perform its obligation, to continue to collect, or levy and
 996 collect, assessments, policyholder surcharges ~~market~~
 997 ~~equalization~~ or other surcharges under sub-subparagraph (b)3.i.
 998 ~~subparagraph (c)10.~~, or any other rights, revenues, or other
 999 assets of the corporation pledged pursuant to any financing
 1000 documents.

1001 3. Each such pledge or sale of, lien upon, and security
 1002 interest in, including the priority of such pledge, lien, or
 1003 security interest, any such assessments, policyholder surcharges
 1004 ~~market equalization~~ or other surcharges, or other rights,
 1005 revenues, or other assets which are collected, or levied and
 1006 collected, after the commencement of and during the pendency of,
 1007 or after, any such proceeding shall continue unaffected by such
 1008 proceeding. As used in this subsection, the term "financing

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1009 documents" means any agreement or agreements, instrument or
 1010 instruments, or other document or documents now existing or
 1011 hereafter created evidencing any bonds or other indebtedness of
 1012 the corporation or pursuant to which any such bonds or other
 1013 indebtedness has been or may be issued and pursuant to which any
 1014 rights, revenues, or other assets of the corporation are pledged
 1015 or sold to secure the repayment of such bonds or indebtedness,
 1016 together with the payment of interest on such bonds or such
 1017 indebtedness, or the payment of any other obligation or
 1018 financial product, as defined in the plan of operation of the
 1019 corporation related to such bonds or indebtedness.

1020 4. Any such pledge or sale of assessments, revenues,
 1021 contract rights, or other rights or assets of the corporation
 1022 shall constitute a lien and security interest, or sale, as the
 1023 case may be, that is immediately effective and attaches to such
 1024 assessments, revenues, or contract rights or other rights or
 1025 assets, whether or not imposed or collected at the time the
 1026 pledge or sale is made. Any such pledge or sale is effective,
 1027 valid, binding, and enforceable against the corporation or other
 1028 entity making such pledge or sale, and valid and binding against
 1029 and superior to any competing claims or obligations owed to any
 1030 other person or entity, including policyholders in this state,
 1031 asserting rights in any such assessments, revenues, or contract
 1032 rights or other rights or assets to the extent set forth in and
 1033 in accordance with the terms of the pledge or sale contained in
 1034 the applicable financing documents, whether or not any such
 1035 person or entity has notice of such pledge or sale and without
 1036 the need for any physical delivery, recordation, filing, or

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1037 other action.

1038 5. As long as the corporation has any bonds outstanding,
 1039 the corporation may not file a voluntary petition under chapter
 1040 9 of the federal Bankruptcy Code or such corresponding chapter
 1041 or sections as may be in effect, from time to time, and a public
 1042 officer or any organization, entity, or other person may not
 1043 authorize the corporation to be or become a debtor under chapter
 1044 9 of the federal Bankruptcy Code or such corresponding chapter
 1045 or sections as may be in effect, from time to time, during any
 1046 such period.

1047 6. If ordered by a court of competent jurisdiction, the
 1048 corporation may assume policies or otherwise provide coverage
 1049 for policyholders of an insurer placed in liquidation under
 1050 chapter 631, under such forms, rates, terms, and conditions as
 1051 the corporation deems appropriate, subject to approval by the
 1052 office.

1053 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1101 Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway <i>JC</i>	Cooper <i>RC</i>

SUMMARY ANALYSIS

The proposed committee substitute (PCS) contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, cancellation of auto insurance, and interest owed on personal injury protection (PIP) benefits. Specifically, the PCS:

- Expands the coverage of travel insurance to include event cancellation and damage to travel accommodations and lengthens the travel period that can be covered by a policy from 60 days to 90 days;
- Expands who can be licensed to sell travel insurance to allow full-time salaried employees of general lines agents and business entities that do travel planning to sell travel insurance;
- Exempts certain employees of licensed insurance agents or licensed insurance adjusters selling portable electronics insurance from having to be licensed as an insurance adjuster;
- Changes the required disclosures for commercial insurance sold in the surplus lines market;
- Clarifies current law relating to the filing of reinsurance summary statements by insurers with the Office of Insurance Regulation (OIR);
- Allows the Department of Financial Services (DFS) to give licensure examinations in Spanish and requires license applicants requesting an examination in Spanish to pay the costs related to the examination;
- Allows a "Notice of Change in Policy Terms" to be used to remove sinkhole coverage from a base property insurance policy;
- Limits who can request property insurance mediation via the property insurance mediation program run by DFS to policyholders, as first-party claimants, and insurers;
- Makes property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane ineligible for the property insurance mediation program;
- Confirms the definition of "limited apportionment company" in the insurance code;
- Prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder relating to crop insurance;
- Exempts a salvage motor vehicle dealer from having to carry garage liability or PIP insurance on vehicles that have been issued a certificate of destruction and that cannot be operated on the road;
- Allows cancellation of any private passenger motor vehicle insurance policy, regardless of whether or not the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored; and
- Confirms the interest on overdue PIP benefits to the rate of interest on judgments generally.

The PCS has no fiscal impact on local government. DFS estimates the PCS will cost the agency \$50,000. The PCS may increase the license examination costs for applicants wanting an examination in Spanish, will take away dividends given to farmers for crop insurance, should allow insurance agents and insurers not able to provide patronage dividends for crop insurance to be more competitive with those that do, will save certain insurance costs for salvage motor vehicle dealers, and will create additional expenses for insurers wanting to write the expanded type of travel insurance allowed under the PCS.

The PCS is effective July 1, 2012, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The PCS contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, and interest owed on personal injury protection benefits.

Limited Lines Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.¹

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, or communication equipment service warranty agreement sales.²

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS, be fingerprinted³ and be appointed by an insurance company. Licensure requirements to sell some limited lines insurance require an agent pass an examination in order to be licensed, others do not.

Travel Insurance Limited Licenses

License Coverage

Current law provides travel insurance covers:

- Accident death or dismemberment of a traveler;
- Trip cancellation, interruption, or delay;
- Loss of or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation of a traveler; or
- Medical, surgical, and hospital expenses related to an illness or emergency of a traveler.

The PCS expands the coverage of travel insurance to include event cancellation and damage to travel accommodations.

¹ s. 626.112, F.S.

² s. 626.321, F.S.

³ Licensees for a limited license as a communications equipment insurance agent do not have to be fingerprinted.

Policy Term

Under current law, a travel insurance policy can cover no more than 60 days of travel within the policy term, although the policy term may be longer than 60 days. The PCS lengthens the travel period that can be covered by a policy from 60 days to 90 days, with a corresponding extension of the allowable policy term.

Eligible Licensees

Generally, current law only allows employees of a common carrier, employees of a transportation ticket agency, timeshare developers, timeshare exchange companies, and sellers of travel regulated under chapter 559 (e.g., sellers of tour packages and tour-guide services) to sell travel insurance. The PCS expands who can be licensed to sell travel insurance to allow full-time salaried employees of general lines agents⁴ and business entities that do travel planning to sell travel insurance.

The PCS specifies travel insurance license requirements for business entities that do travel planning to ensure each office location of the entity is covered by the license. These requirements are virtually the same as those required for business entities with offices that offer motor vehicles for rent or lease and are eligible to offer motor vehicle rental insurance under a limited license.

License Fees

The PCS makes a conforming change to the insurance agent licensing fee statute to require and specify travel insurance licensing fees for offices of a business entity that does travel planning. The change is consistent with the motor vehicle rental insurance licensing fees required for offices of business entities that rent motor vehicles and sell motor vehicle rental insurance. Biennial appointment fees for each office of a business entity doing travel planning is still required, but each office will no longer pay a one-time license application fee.

Adjusters for Portable Electronics Insurance Claims

Portable electronics insurance is not recognized in current law, but CS/HB 725 creates this type of insurance and creates a limited license for an agent to sell this type of insurance. According to CS/HB 725, portable electronics insurance covers the loss, theft, mechanical failure, malfunction or damage on portable electronics. Portable electronics is broadly defined by CS/HB 725 to encompass electronic equipment such as cellular phones, pagers, portable computers, GPS units, gaming systems, docking stations, digital cameras and video cameras.

Generally, persons who adjust insurance claims must be licensed as an insurance adjuster.⁵ The PCS exempts certain employees of licensed insurance agents or licensed insurance adjusters from having to be licensed as an insurance adjuster. Specifically, employees who handle claim information or enter data into a preprogrammed automated claims adjudication system for portable electronic insurance do not have to be licensed as an adjuster. The PCS provides parameters for the licensing exemption for these employees.

Furthermore, the PCS provides consistency in the licensing of nonresident independent adjusters adjusting portable electronics insurance claims for adjusters residing in the United States and in Canada. Nonresident independent adjusters are recognized by s. 626.8584, F.S., and license qualifications for this type of adjuster are prescribed in s. 626.8734, F.S. Under current law, generally, a nonresident independent adjuster is not a resident of Florida, is a licensed independent adjuster in the adjuster's state of residence,⁶ and is self-employed or employed by an independent adjusting firm or other independent adjuster. Thus, adjusters holding a license in a state other than Florida can obtain a nonresident adjuster license in Florida due to Florida's reciprocity with the licensing state (home state). In order to be able to adjust claims in the U.S., adjusters residing in Canada often become licensed in a state in the U.S. and use that license to obtain a license as a nonresident adjusters in

⁴ A general lines insurance agent is an insurance agent authorized to transact one or more of the following kinds of insurance for commercial or noncommercial purposes: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.

⁵ Part VI, Chapter 626, F.S. There are numerous licenses for adjusters, depending on the nature of the adjuster's employment and resident status.

⁶ If the adjuster's state of residence does not license independent adjusters, then the adjuster must pass an adjuster examination in Florida in order to be licensed as a nonresident independent adjuster.

another state with a reciprocity agreement with their initial licensing state (or home state). The PCS requires this licensing arrangement for adjusters that reside in Canada and adjust portable electronics insurance. To that end, the PCS requires Canadian residents to be licensed in a state in the U.S. in order to be licensed as a nonresident independent adjuster in Florida.

Surplus Lines Insurance – Disclosures Required

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

1. Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
2. Niche risks for which admitted carriers do not have a filed policy form or rate; and
3. Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.⁷ Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers”.⁸

For most types of insurance sold in the surplus lines market, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.⁹ Section 626.914, F.S. defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Furthermore, for most types of insurance sold in the surplus lines market, the premium rate for policies written by a surplus lines insurer must be higher than the rate used by a majority of insurers in the admitted market for the same coverage on a similar risk.¹⁰

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.¹¹ Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers’ compensation. Some commercial insurance, such as workers’ compensation, is required to be purchased by businesses;¹² however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

Current law exempts certain types of commercial lines insurance sold in the surplus lines market from the diligent effort and premium requirements outlined above.¹³ However, surplus lines agents selling these types of commercial insurance must disclose specified information about the insurance to policyholders. The required disclosure identifies the policy as a surplus lines policy and notifies the

⁷ s. 624.09(1), F.S., defines “authorized” insurer.

⁸ s. 624.09(2), F.S. defines “unauthorized” insurer, s. 626.914(2), F.S., defines “eligible surplus lines insurer,” and s. 626.918, F.S., provides eligibility for surplus lines insurers.

⁹ s. 626.916(1)(a), F.S.

¹⁰ s. 626.916(1)(b), F.S.

¹¹ <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed December 11, 2011).

¹² Generally, non-construction businesses employing four or more employees have to buy workers’ compensation insurance. Construction businesses must buy workers’ compensation insurance if the business has one or more employees.

¹³ The types of commercial insurance exempt are: excess or umbrella; surety and fidelity; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multi-peril; excess property; burglary and theft; and any other commercial lines categories as determined by the Office of Insurance Regulation. Rates for these types of insurance are also exempt from the rate approval process.

policyholder that superior coverage may be available in the admitted market at a lower premium. The disclosure also notifies the policyholder that the policy is not protected by the Florida Insurance Guaranty Association (FIGA) if the surplus lines insurer becomes insolvent.¹⁴ The PCS changes the required disclosures for commercial insurance sold in the surplus lines market that is exempt from the diligent effort and premium requirements applicable to surplus lines insurance. The PCS requires the disclosure to state that coverage may be available in the admitted market, rather than superior coverage may be available at a lesser cost. The disclosure related to FIGA is still required.

Filing of Reinsurance Summary Statements

Reinsurance is insurance bought by insurers to insure their book of business. Reinsurers do not pay policyholder claims. Instead, they reimburse insurers for claims paid by the insurer. Reinsurance effectively increases an insurer's capital and therefore the insurer's capacity to sell more insurance. The reinsurance business is global, with some of the largest reinsurers based in Europe and Bermuda.¹⁵

Reinsurance is not regulated by the OIR because reinsurers are not licensed by OIR. However, with limited exceptions, reinsurers must be accredited by OIR for insurers to take credit for reinsurance purchased on the insurer's financial statements. Section 624.610, F.S., provides requirements for reinsurer accreditation. Reinsurance rates are also not regulated by OIR and are negotiated by the insurer and reinsurer.

Generally, all insurers formed in Florida buying reinsurance on their book of business must file with the OIR a summary of the reinsurance purchased. The summary is used by OIR, in part, to monitor the solvency of the insurer. The contents of the summary statement are set in s. 627.610(11)(a), F.S. There are, however, three exceptions to current law requiring insurers to file reinsurance summary statements. Insurers with surplus over \$100 million, insurers with premiums less than \$500,000 during a calendar year, and insurers with less than 1,000 policyholders at the end of a calendar year do not have to file reinsurance summary statements with OIR for the reinsurance the insurer purchases. Current law also specifies an exception to the exception. The exception to the exception requires insurers with less than 1,000 policyholders that have less than \$500,000 in premium in a calendar year, but have \$250,000 of the \$500,000 of premium written in the last quarter of the calendar year, to file reinsurance statements.

The PCS rewords and clarifies the exception to the exception. It does not substantively change the exception to the exception or how the OIR applies the exception to the exception. Thus, insurers with less than 1,000 policyholders and less than \$500,000 in premium in a calendar year, but with \$250,000 of the \$500,000 in premium written in the last quarter of the year, will still have to file reinsurance statements with the OIR.

DFS Licensure Examinations in Spanish

DFS licenses many different types of insurance related professionals, including insurance agents and adjusters. Although s. 626.261, F.S., sets forth certain license examination requirements, there is no provision in current law allowing or requiring DFS to give licensure examinations in any language other than English. And, according to DFS, the department does not currently give any license examination in a language other than English.

The PCS allows DFS to give licensure examinations in Spanish and requires license applicants requesting an examination in Spanish to pay the full costs related to the development, preparation, administration, grading and evaluation of the examination. The PCS requires DFS to consider the percentage of the population who speak Spanish when determining whether it is in the public interest for an examination to be given in Spanish.

¹⁴ Statutory provisions relating to the Florida Insurance Guaranty Association (FIGA), which was created in 1970, are contained in part II of chapter 631, F.S. FIGA is a nonprofit corporation composed of all insurers licensed to sell property and casualty insurance in Florida. When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

¹⁵ <http://www2.iii.org/glossary> (last viewed December 20, 2011).

Other licensing agencies in Florida are allowed to give licensure examinations in languages other than English. In fact, this PCS is similar to s. 455.217(6), F.S., which allows boards within the Department of Business and Professional Regulation (DBPR) that regulate various professions to provide licensure examinations in an applicant's native language, if that language is not English or Spanish. The DBPR examination statute requires license exam applicants wanting an examination translated to a language other than English or Spanish to file a request for a translated examination with the licensing board at least six months before the exam is scheduled to be taken. The Department of Agriculture and Consumer Services (DACs) has an identical provision to the DBPR provision allowing DACs to give examinations in languages other than English and Spanish for land surveyors and mappers license applicants.¹⁶

Change of Policy Terms In Insurance Policies

In 2011, legislation¹⁷ was enacted allowing insurance companies to change terms contained in a property and casualty policy at policy renewal without nonrenewing the entire policy. To effectuate a change in policy terms without nonrenewing a policy, the insurer must give the policyholder a written "Notice of Change in Policy Terms" with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide a "Notice of Change in Policy Terms" to the policyholder, the terms of the insurance policy are not changed. The OIR still must approve the change in policy terms via a form filing.¹⁸

Section 627.706(4), F.S., enacted in 2009,¹⁹ requires property insurance insurers to nonrenew property insurance policies to remove sinkhole coverage from the base property insurance policy when the insurer decides to only offer catastrophic ground cover collapse coverage in the base policy.²⁰ There is uncertainty as to whether property insurers can remove sinkhole coverage from the base policy at renewal using a "Notice of Change in Policy Terms" or whether the insurer must nonrenew the policy to remove sinkhole coverage and then issue a new policy without sinkhole coverage. To clarify this uncertainty, the PCS specifies a "Notice of Change in Policy Terms" can be used to change policy terms at policy renewal, notwithstanding any other provision of law. Accordingly, to remove sinkhole coverage from a base property insurance policy, insurers would not have to nonrenew the policy and issue a new policy without sinkhole coverage. Instead, insurers can provide the policyholder with a "Notice of Change in Policy Terms" at policy renewal removing sinkhole coverage from the base policy.

Mediation of Property Insurance Claims

A property mediation program for hurricane and non-hurricane related property insurance disputes is established under s. 627.7015, F.S. The mediation program is conducted by DFS. The program is not available if the appraisal process set forth in an insurance policy or litigation under the policy has begun. The mediation program is available for personal and commercial residential claims but not to other commercial claims, to private passenger motor vehicle insurance claims, to disputes relating to liability claims in property insurance policies, or to claims under policies issued by the National Flood Insurance Program. Specific mediation procedures and timeframes are set forth in Rule 69J-166.031, F.A.C., for personal residential policies and 69J-166.002, F.A.C., for commercial residential policies.

Four types of property insurance claims under current law are not eligible for the property insurance mediation program. Claims where the insurer suspects fraud are not eligible. Claims for losses that are not covered under the insurance policy are not eligible. Claims that the insurer denies due to a

¹⁶ s. 472.0131(6), F.S.

¹⁷ Ch. 2011-142, L.O.F.

¹⁸ With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

¹⁹ s. 1, Ch. 2009-178, L.O.F.

²⁰ Sinkhole coverage is more extensive coverage than catastrophic ground cover collapse coverage. Sinkhole coverage insures the property against sinkhole losses caused by sinkhole activity. Catastrophic ground cover collapse coverage insures against geological activity that causes abrupt ground cover collapse causing structural damage to the property that renders the structure being condemned. Section 627.706(1), F.S., requires all insurers to cover catastrophic ground cover collapse in a property insurance policy and to offer sinkhole coverage to the policyholder for an additional premium.

material misrepresentations of fact by the policyholder are not eligible. And, claims with less than \$500 in controversy are not eligible. The PCS makes a fifth type of property insurance claim not eligible for the mediation program. Property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane are not eligible for the mediation program.

The PCS limits who can request mediation to policyholders, as first-party claimants, and insurers and makes conforming changes. First-party claimants are those in a direct contractual relationship with their insurance company. Limiting mediation to policyholders and insurers prevents other persons, such as vendors and contractors, who are involved in a claim and are assigned benefits of the claim by the policyholder from requesting mediation of the claim.

Definition of Limited Apportionment Insurance Companies

The PCS provides a consistent definition of "limited apportionment company." Limited apportionment company is defined in two places in statute, s. 627.351(2)(b)3., F.S. relating to windstorm risk apportionment²¹ and s. 627.351(6)(c)13., F.S., relating to the Coastal Account in Citizens Property Insurance Corporation (Citizens).²² The definitions are the same except for the maximum amount of surplus the insurer must have in order to meet the definition. The definition in the windstorm risk apportionment statute requires \$20 million or less in surplus, whereas, the definition in the Citizens' statute requires \$25 million or less. The PCS changes the amount in the windstorm risk apportionment statute to \$25 million or less to make it consistent with the amount in the Citizens' statute.

Patronage Dividends for Crop Insurance

Crop insurance is purchased by agricultural producers (i.e., farmers) for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds/farmers at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government.

Section 626.753, F.S., allows insurance agents selling crop insurance to farmers to share commissions on the sale of this insurance with production credit associations²³ or federal land bank associations, the

²¹ The Florida Windstorm Underwriting Association (FWUA) was formed under the authority of s. 627.351(2), F.S. The FWUA provided wind-only coverage for property in coastal areas that could not procure coverage in the admitted market. The FUWA is no longer active. Its policies were transferred to Citizens in 2002 when Citizens was created. (see s. 627.351(6)(v), F.S.)

²² Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multi-peril Policies
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multi-peril Policies
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only and Multi-peril Policies
Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

²³ The Farm Credit System, a government-sponsored enterprise established in 1916, provides financing and financial services related to agriculture and includes a number of credit organizations. A Production Credit Association (PCA) delivers short and intermediate-term loans to farmers and ranchers, and to rural residents for housing. A PCA also makes loans to these borrowers for basic processing and marketing activities, and to farm-related businesses. A PCA obtains funds from a Farm Credit Bank to lend to its members and owns the loan assets. A Federal Land Bank Association (FLBA) was a lending agent for a Federal Land Bank and later the Farm Credit Bank. FLBAs made and serviced long-term mortgage loans to farmers and ranchers, and to rural residents for

entities loaning funds to the farmers who are purchasing crop insurance. The insurance agents cannot share commissions with the farmers purchasing crop insurance as this would be a rebating of commission which is prohibited by s. 626.9541(1)(h), F.S.

Production credit associations and federal land bank associations provide patronage dividends (i.e., loyalty dividends) to farmers borrowing money through the association. These associations are akin to cooperatives. Farmers obtaining loans through the associations become owners of the association through the purchase of stock in the association in proportion to their loan amount. Each year the association's board of directors determines if the association had sufficient earnings to pay a patronage dividend to the farmers borrowing funds through the association (i.e., the stockholders of the association) and will pay a dividend if there are sufficient earnings. Patronage dividends reduce the tax expense of the association because the association is given a tax deduction for the amount of net income the association distributes in patronage dividends.²⁴ However, the dividend is treated as income to the farmer receiving the dividend.²⁵

In addition to agricultural loans, some associations offer farmers crop insurance. The PCS prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder/farmer relating to crop insurance, making it an unlawful rebate. An insurance agent sharing commission with an association that knows the association is giving patronage dividends for crop insurance is deemed to be violating the law allowing commission sharing.

Salvage Motor Vehicle Dealers – Insurance Requirements

The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for the licensing and certification of motor vehicle dealers.²⁶ A salvage motor vehicle dealer is any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.²⁷ Among the requirements to receive a license, a motor vehicle dealer must provide to the DHSMV evidence that the applicant is insured under a garage liability insurance policy²⁸ or a general liability insurance policy coupled with a business automobile policy,²⁹ which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy.³⁰

The PCS provides that salvage motor vehicle dealers are exempt from the requirements for garage liability insurance and personal injury protection on those vehicles issued a certificate of destruction if that vehicle cannot be legally operated on state roads, highways or streets.

Cancellation of Motor Vehicle Insurance Policies

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to 2 months' premium. This is not applicable if:

housing. FLBAs did not own the loan assets, but made loans on behalf of the Federal Land Bank/Farm Credit Bank with which they were affiliated. As of October 1, 2000, there are no longer any FLBAs in the Farm Credit System.

(<https://reports.fca.gov/FCInstDescr.asp>, last viewed January 20, 2011).

²⁴ See Internal Revenue Code, Part 4, Chapter 44, Section 1, available at http://www.irs.gov/irm/part4/irm_04-044-001-cont01.html (last viewed January 22, 2011).

²⁵ See Internal Revenue Publication 225 (2011) Farmer's Tax Guide, available at <http://www.irs.gov/publications/p225/ch03.html> (last viewed January 22, 2011).

²⁶ s. 320.27, F.S.

²⁷ s. 320.27(1)(c), F.S.

²⁸ Garage liability insurance is a form of business insurance generally covering liability for the premises, operations, products, and completed operations within a commercial garage.

²⁹ A business insurance policy generally covers a company's use of cars, trucks, and other vehicles in the course of carrying out its business.

³⁰ s. 320.27(3), F.S.

- The insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.³¹

For policies under which the first two months of premium do not have to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

The PCS allows cancellation of any private passenger motor vehicle insurance policy, regardless of whether or not the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored. The PCS also removes language that limits cancellation of policies within the first 60 days to nonpayment of premium.

Interest Rate for Overdue Payment of Personal Injury Protection Benefits

The PCS provides for interest on overdue PIP benefits at the rate for the quarter in which the payment became overdue, rather than the rate for the year in which the payment became overdue. This conforms to a change made last year to s. 55.03, F.S., concerning the rate of interest on judgments generally.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.27, F.S., relating to motor vehicle dealers.

Section 2: Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.

Section 3: Amends s. 624.610, F.S., relating to reinsurance.

Section 4: Amends s. 626.261, F.S., relating to conduct of examination.

Section 5: Amends s. 6226.321, F.S., relating to limited licenses.

Section 6: Amends s. 626.753, F.S., relating to sharing commissions; penalty.

Section 7: Creates s. 626.8685, F.S., relating to portable electronics insurance claims; exemption; licensure.

Section 8: Amends s. 626.916, F.S., relating to eligibility for export.

Section 9: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 10: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 11: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 12: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 13: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts and is effective upon becoming a law.

³¹ s. 627.7295(7), F.S.

Section 14: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims and is effective upon becoming a law.

Section 15: Provides an effective date of July 1, 2012, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DFS estimates their cost to implement the PCS is approximately \$50,000.³² The department estimates \$45,000 of the \$50,000 cost will be associated with translation of the agency's licensure exams from English to Spanish by a vendor. The remaining \$5,000 cost is associated with updating the department's computer system to implement the new procedure for travel insurance provide by the PCS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact of DFS Licensure Examinations in Spanish

The provision requiring DFS license examinations in Spanish could result in examination costs to license applicants wanting to take the exam in Spanish being higher than those for the English language exam. The PCS requires applicants wanting an exam in Spanish to bear the examination cost. Thus, if few applicants want a Spanish examination, the cost of the examination for the ones that do will be higher. It is impossible to know how many license applicants will request a Spanish examination, and thus impossible to determine how much a Spanish exam will cost so that the cost of a Spanish examination can be compared to the cost of an English examination.

However, DFS obtained data from Texas regarding the number of times the Texas exams for life insurance agents and limited lines agents were given in Spanish.³³ According to this data, from September 30, 2010 – August 31, 2011, Texas gave their life insurance agent exam 3,563 times, with the exam given in Spanish 101 of the 3,563 times. Comparably, Florida gave their life insurance examination 3,712 times annually. During the same September 2010 – August 2011 time period, the Texas limited license examination was given a total of 2,308 times, with the exam being given 29 of the 2,308 times in Spanish. Based on the Texas data and if the cost to translate the Florida license exam to Spanish was recouped by DFS in one fiscal year, DFS estimates a license applicant talking a Spanish examination in Florida would pay \$341 per examination, \$298 more than the \$43 cost to take an examination in English.

³² DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.

³³ DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.

Impact of Changes to Travel Insurance

Insurers wanting to offer the expanded coverage for travel insurance allowed by the bill will incur costs associated with changing their insurance contracts reflecting the expanded coverage and filing the new contracts with the OIR for approval before implementing the new coverage.

Impact of Patronage Dividends for Crop Insurance

Farmers who currently receive patronage dividends based on crop insurance will no longer receive those dividends. Insurance agents that sell crop insurance for insurers that do not provide patronage dividends should be more competitive with those agents that now sell crop insurance with patronage dividends. Insurers writing crop insurance that do not provide patronage dividends should be more competitive with insurers that currently write crop insurance with patronage dividends.

Impact of Salvage Motor Vehicle Dealers – Insurance Requirements

Salvage motor vehicle dealers will no longer have to purchase garage liability and personal protection insurance on certain vehicles.

D. FISCAL COMMENTS:

Changes made by the bill that require insurers to obtain OIR approval for revised insurance contracts will increase the workload of the OIR product review unit which reviews and approves insurance contracts, however, the OIR did not quantify the increased workload in the agency bill analysis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the PCS and none repealed by the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision in the PCS exempting salvage motor vehicle dealers from having to carry certain types of insurance coverage is also contained in HB 1223.

The provisions in the PCS relating to portable electronics insurance are meaningless unless CS/HB 725, which creates this type of insurance, is enacted. Consideration should be given to incorporating the changes to portable electronics insurance into CS/HB 725 which creates this type of insurance and removing the provision from the PCS.

The provisions in the PCS relating to travel insurance do not incorporate the bill drafting changes to the travel insurance statute contained in CS/HB 725. For consistency, the changes in CS/HB 725 could be incorporated into the PCS.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 | respect to application of such exemption; prohibiting
 30 | residents of Canada from licensure as nonresident
 31 | independent adjusters under certain circumstances;
 32 | amending s. 626.916, F.S.; revising the disclosure
 33 | statement signed by an insured placing coverage in the
 34 | surplus lines market; amending s. 626.9541, F.S.;
 35 | providing an additional practice meeting the
 36 | definition of unfair methods of competition and unfair
 37 | or deceptive acts or practices; amending s. 627.351,
 38 | F.S.; increasing the amount of surplus as to
 39 | policyholders that certain insurers who are members of
 40 | a plan to equitably apportion or share windstorm
 41 | coverage may have in order to petition the Department
 42 | of Financial Services to qualify as a limited
 43 | apportionment company; amending s. 627.43141, F.S.;
 44 | clarifying provisions relating to changing policy
 45 | terms in a renewal policy; amending s. 627.7015, F.S.;
 46 | revising provisions relating to alternative procedures
 47 | for the resolution of disputed property insurance
 48 | claims; amending s. 627.7295, F.S.; clarifying
 49 | provisions relating to cancellation for nonpayment of
 50 | premiums for motor vehicle insurance; allowing the
 51 | cancellation of such policies under certain
 52 | circumstances; amending s. 627.736, F.S.; specifying
 53 | the interest rate applicable to the accrual of
 54 | interest on overdue payments of personal injury
 55 | protection benefits; providing an effective date.
 56 |

57 Be It Enacted by the Legislature of the State of Florida:

58

59 Section 1. Subsection (3) of section 320.27, Florida
60 Statutes, is amended to read:

61 320.27 Motor vehicle dealers.—

62 (3) APPLICATION AND FEE.—The application for the license
63 shall be in such form as may be prescribed by the department and
64 shall be subject to such rules with respect thereto as may be so
65 prescribed by it. Such application shall be verified by oath or
66 affirmation and shall contain a full statement of the name and
67 birth date of the person or persons applying therefor; the name
68 of the firm or copartnership, with the names and places of
69 residence of all members thereof, if such applicant is a firm or
70 copartnership; the names and places of residence of the
71 principal officers, if the applicant is a body corporate or
72 other artificial body; the name of the state under whose laws
73 the corporation is organized; the present and former place or
74 places of residence of the applicant; and prior business in
75 which the applicant has been engaged and the location thereof.
76 Such application shall describe the exact location of the place
77 of business and shall state whether the place of business is
78 owned by the applicant and when acquired, or, if leased, a true
79 copy of the lease shall be attached to the application. The
80 applicant shall certify that the location provides an adequately
81 equipped office and is not a residence; that the location
82 affords sufficient unoccupied space upon and within which
83 adequately to store all motor vehicles offered and displayed for
84 sale; and that the location is a suitable place where the

85 applicant can in good faith carry on such business and keep and
 86 maintain books, records, and files necessary to conduct such
 87 business, which will be available at all reasonable hours to
 88 inspection by the department or any of its inspectors or other
 89 employees. The applicant shall certify that the business of a
 90 motor vehicle dealer is the principal business which shall be
 91 conducted at that location. Such application shall contain a
 92 statement that the applicant is either franchised by a
 93 manufacturer of motor vehicles, in which case the name of each
 94 motor vehicle that the applicant is franchised to sell shall be
 95 included, or an independent (nonfranchised) motor vehicle
 96 dealer. Such application shall contain such other relevant
 97 information as may be required by the department, including
 98 evidence that the applicant is insured under a garage liability
 99 insurance policy or a general liability insurance policy coupled
 100 with a business automobile policy, which shall include, at a
 101 minimum, \$25,000 combined single-limit liability coverage
 102 including bodily injury and property damage protection and
 103 \$10,000 personal injury protection. However, a salvage motor
 104 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 105 from the requirements for garage liability insurance and
 106 personal injury protection insurance on those vehicles that have
 107 been issued a certificate of destruction and cannot be operated
 108 legally on state roads, highways, or streets. Franchise dealers
 109 must submit a garage liability insurance policy, and all other
 110 dealers must submit a garage liability insurance policy or a
 111 general liability insurance policy coupled with a business
 112 automobile policy. Such policy shall be for the license period,

113 and evidence of a new or continued policy shall be delivered to
 114 the department at the beginning of each license period. Upon
 115 making initial application, the applicant shall pay to the
 116 department a fee of \$300 in addition to any other fees now
 117 required by law; upon making a subsequent renewal application,
 118 the applicant shall pay to the department a fee of \$75 in
 119 addition to any other fees now required by law. Upon making an
 120 application for a change of location, the person shall pay a fee
 121 of \$50 in addition to any other fees now required by law. The
 122 department shall, in the case of every application for initial
 123 licensure, verify whether certain facts set forth in the
 124 application are true. Each applicant, general partner in the
 125 case of a partnership, or corporate officer and director in the
 126 case of a corporate applicant, must file a set of fingerprints
 127 with the department for the purpose of determining any prior
 128 criminal record or any outstanding warrants. The department
 129 shall submit the fingerprints to the Department of Law
 130 Enforcement for state processing and forwarding to the Federal
 131 Bureau of Investigation for federal processing. The actual cost
 132 of state and federal processing shall be borne by the applicant
 133 and is in addition to the fee for licensure. The department may
 134 issue a license to an applicant pending the results of the
 135 fingerprint investigation, which license is fully revocable if
 136 the department subsequently determines that any facts set forth
 137 in the application are not true or correctly represented.

138 Section 2. Paragraph (b) of subsection (9) of section
 139 624.501, Florida Statutes, is amended to read:

140 624.501 Filing, license, appointment, and miscellaneous

141 fees.—The department, commission, or office, as appropriate,
 142 shall collect in advance, and persons so served shall pay to it
 143 in advance, fees, licenses, and miscellaneous charges as
 144 follows:

145 (9)

146 (b) For all limited appointments as agent, as provided ~~for~~
 147 in s. 626.321(1)(c) and (d) ~~626.321(1)(d)~~, the agent's original
 148 appointment and biennial renewal or continuation thereof for
 149 each insurer is ~~shall be~~ equal to the number of offices, branch
 150 offices, or places of business covered by the license multiplied
 151 by the fees set forth in paragraph (a).

152 Section 3. Paragraph (c) of subsection (11) of section
 153 624.610, Florida Statutes, is amended to read:

154 624.610 Reinsurance.—

155 (11)

156 (c) This subsection applies to cessions of directly
 157 written risk or loss. This subsection does not apply to
 158 contracts of facultative reinsurance or to any ceding insurer
 159 that has a with surplus as to policyholders which that exceeds
 160 \$100 million as of the immediately preceding December 31. A
 161 ~~Additionally, any~~ ceding insurer otherwise subject to this
 162 section which had with less than \$500,000 in direct premiums
 163 written in this state during the preceding calendar year and no
 164 more than \$250,000 in direct premiums written in this state
 165 during the preceding calendar quarter, and ~~or~~ which had with
 166 less than 1,000 policyholders at the end of the preceding
 167 calendar year, is exempt from ~~the requirements of~~ this
 168 subsection. ~~However, any ceding insurer otherwise subject to~~

169 ~~this section with more than \$250,000 in direct premiums written~~
 170 ~~in this state during the preceding calendar quarter is not~~
 171 ~~exempt from the requirements of this subsection.~~

172 Section 4. Subsection (5) is added to section 626.261,
 173 Florida Statutes, to read:

174 626.261 Conduct of examination.—

175 (5) The department may provide licensure examinations in
 176 Spanish. Applicants requesting examination or reexamination in
 177 Spanish must bear the full cost of the department's development,
 178 preparation, administration, grading, and evaluation of the
 179 Spanish-language examination. When determining whether it is in
 180 the public interest to allow the examination to be translated
 181 into and administered in Spanish, the department shall consider
 182 the percentage of the population who speak Spanish.

183 Section 5. Paragraph (c) of subsection (1) of section
 184 626.321, Florida Statutes, is amended to read:

185 626.321 Limited licenses.—

186 (1) The department shall issue to a qualified individual,
 187 or a qualified individual or entity under paragraphs (c), (d),
 188 (e), and (i), a license as agent authorized to transact a
 189 limited class of business in any of the following categories:

190 (c) Travel insurance.—License covering only policies and
 191 certificates of travel insurance, which are subject to review by
 192 the office ~~under s. 624.605(1)(g)~~. Policies and certificates of
 193 travel insurance may provide coverage for risks incidental to
 194 travel, planned travel, or accommodations while traveling,
 195 including, but not limited to, accidental death and
 196 dismemberment of a traveler; trip or event cancellation,

197 interruption, or delay; loss of or damage to personal effects or
 198 travel documents; damages to travel accommodations; baggage
 199 delay; emergency medical travel or evacuation of a traveler; or
 200 medical, surgical, and hospital expenses related to an illness
 201 or emergency of a traveler. ~~Any~~ Such policy or certificate may
 202 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~
 203 ~~certificate~~, other than a policy or certificate providing
 204 coverage for air ambulatory services only, each policy or
 205 certificate must be limited to coverage for travel or use of
 206 accommodations of no longer than 90 ~~60~~ days. The license may be
 207 issued only:

208 1. To a full-time salaried employee of a common carrier or
 209 a full-time salaried employee or owner of a transportation
 210 ticket agency and may authorize the sale of such ticket policies
 211 only in connection with the sale of transportation tickets, or
 212 to the full-time salaried employee of such an agent. ~~No~~ Such
 213 policy may not ~~shall~~ be for a ~~duration of~~ more than 48 hours or
 214 more than ~~for~~ the duration of a specified one-way trip or round
 215 trip.

216 2. To an entity or individual that is:

217 a. The developer of a timeshare plan that is the subject
 218 of an approved public offering statement under chapter 721;

219 b. An exchange company operating an exchange program
 220 approved under chapter 721;

221 c. A managing entity operating a timeshare plan approved
 222 under chapter 721;

223 d. A seller of travel as defined in chapter 559; or

224 e. A subsidiary or affiliate of any of the entities

225 | described in sub-subparagraphs a.-d.

226 | 3. To a full-time salaried employee of a licensed general
 227 | lines agent or to a business entity that offers travel planning
 228 | services if insurance sales activities authorized by the license
 229 | are in connection with, and incidental to, travel.

230 | a. A license issued to a business entity that offers
 231 | travel planning services must encompass each office, branch
 232 | office, or place of business making use of the entity's business
 233 | name in order to offer, solicit, and sell insurance pursuant to
 234 | this paragraph.

235 | b. The application for licensure must list the name,
 236 | address, and phone number for each office, branch office, or
 237 | place of business that is to be covered by the license. The
 238 | licensee shall notify the department of the name, address, and
 239 | phone number of any new location that is to be covered by the
 240 | license before the new office, branch office, or place of
 241 | business engages in the sale of insurance pursuant to this
 242 | paragraph. The licensee shall notify the department within 30
 243 | days after the closing or terminating of an office, branch
 244 | office, or place of business. Upon receipt of the notice, the
 245 | department shall delete the office, branch office, or place of
 246 | business from the license.

247 | c. A licensed and appointed entity is directly responsible
 248 | and accountable for all acts of the licensee's employees and
 249 | parties with whom the licensee has entered into a contractual
 250 | agreement to offer travel insurance.

251 |
 252 | A licensee shall require each individual ~~employee~~ who offers

253 policies or certificates under this subparagraph to receive
 254 initial training from a general lines agent or an insurer
 255 authorized under chapter 624 to transact insurance within this
 256 state. For an entity applying for a license as a travel
 257 insurance agent, the fingerprinting requirement of this section
 258 applies only to the president, secretary, and treasurer and to
 259 any other officer or person who directs or controls the travel
 260 insurance operations of the entity.

261 Section 6. Subsection (3) of section 626.753, Florida
 262 Statutes, is amended to read:

263 626.753 Sharing commissions; penalty.-

264 (3) (a) A general lines agent may share commissions derived
 265 from the sale of crop hail or multiple-peril crop insurance with
 266 a production credit association organized under 12 U.S.C.A. ss.
 267 2071-2077 or a federal land bank association organized under
 268 U.S.C.A. ss. 2091-2098 if the association has specifically
 269 approved the insurance activity by its employees. The amount of
 270 commission to be shared shall be determined by the general lines
 271 agent and the company paying the commission.

272 (b) Any patronage dividend or other payment, discount, or
 273 credit provided to a member of a production credit association
 274 or federal land bank association, which dividend, payment,
 275 discount, or credit is directly or indirectly calculated on the
 276 basis of the premium charged to that member for crop hail or
 277 multiple-peril crop insurance, constitutes an unlawful rebate in
 278 violation of ss. 626.572 and 626.9541 (1) (h).

279 (c) Any agent who engages in commission sharing with a
 280 production credit association or federal land bank association,

281 with the knowledge that the association provides patronage
 282 dividends or other payments, discounts, or credits that
 283 constitute unlawful rebates as described in the subsection, is
 284 deemed to participating in the violation of this section.

285 Section 7. Section 626.8685, Florida Statutes, is created
 286 to read:

287 626.8685 Portable electronics insurance claims; exemption;
 288 licensure restriction.—

289 (1) This part does not apply to any individual who
 290 collects claims information from, or furnishes claims
 291 information to, insureds or claimants, and who conducts data
 292 entry, including entering data into an automated claims
 293 adjudication system, provided that the individual is an employee
 294 of a business entity licensed under this chapter, or its
 295 affiliate, and no more than 25 such persons are under the
 296 supervision of one licensed independent adjuster or licensed
 297 agent who is exempt from licensure pursuant to s. 626.862. For
 298 purposes of this subsection, the term "automated claims
 299 adjudication system" means a preprogrammed computer system
 300 designed for the collection, data entry, calculation, and final
 301 resolution of portable electronics insurance claims that:

302 (a) May be used only by a licensed independent adjuster,
 303 licensed agent, or supervised individual operating pursuant to
 304 this subsection;

305 (b) Must comply with all claims payment requirements of
 306 the insurance code; and

307 (c) Must be certified as compliant with this subsection by
 308 a licensed independent adjuster that is an officer of a licensed

309 business entity under this chapter.

310 (2) Notwithstanding any other provision of law, a resident
 311 of Canada may not be licensed as a nonresident independent
 312 adjuster for purposes of adjusting portable electronics
 313 insurance claims unless the person has successfully obtained an
 314 adjuster's license in another state.

315 Section 8. Paragraph (b) of subsection (3) of section
 316 626.916, Florida Statutes, is amended to read:

317 626.916 Eligibility for export.-

318 (3)

319 (b) Paragraphs (1)(a)-(d) do not apply to classes of
 320 insurance which are subject to s. 627.062(3)(d)1. These classes
 321 may be exportable under the following conditions:

322 1. The insurance must be placed only by or through a
 323 surplus lines agent licensed in this state;

324 2. The insurer must be made eligible under s. 626.918; and

325 3. The insured must sign a disclosure that substantially
 326 provides the following: "You are agreeing to place coverage in
 327 the surplus lines market. ~~Superior~~ Coverage may be available in
 328 the admitted market ~~and at a lesser cost~~. Persons insured by
 329 surplus lines carriers are not protected under the Florida
 330 Insurance Guaranty Act with respect to any right of recovery for
 331 the obligation of an insolvent unlicensed insurer." If the
 332 notice is signed by the insured, the insured is presumed to have
 333 been informed and to know that other coverage may be available,
 334 and, with respect to the diligent-effort requirement under
 335 subsection (1), there is no liability on the part of, and no
 336 cause of action arises against, the retail agent presenting the

337 form.

338 Section 9. Paragraph (h) of subsection (1) of section
 339 626.9541, Florida Statutes, is amended to read:

340 626.9541 Unfair methods of competition and unfair or
 341 deceptive acts or practices defined.—

342 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 343 ACTS.—The following are defined as unfair methods of competition
 344 and unfair or deceptive acts or practices:

345 (h) Unlawful rebates.—

346 1. Except as otherwise expressly provided by law, or in an
 347 applicable filing with the office, knowingly:

348 a. Permitting, or offering to make, or making, any
 349 contract or agreement as to such contract other than as plainly
 350 expressed in the insurance contract issued thereon;

351 b. Paying, allowing, or giving, or offering to pay, allow,
 352 or give, directly or indirectly, as inducement to such insurance
 353 contract, any unlawful rebate of premiums payable on the
 354 contract, any special favor or advantage in the dividends or
 355 other benefits thereon, or any valuable consideration or
 356 inducement whatever not specified in the contract;

357 c. Giving, selling, or purchasing, or offering to give,
 358 sell, or purchase, as inducement to such insurance contract or
 359 in connection therewith, any stocks, bonds, or other securities
 360 of any insurance company or other corporation, association, or
 361 partnership, or any dividends or profits accrued thereon, or
 362 anything of value whatsoever not specified in the insurance
 363 contract.

364 2. Nothing in paragraph (g) or subparagraph 1. of this

365 paragraph shall be construed as including within the definition
 366 of discrimination or unlawful rebates:

367 a. In the case of any contract of life insurance or life
 368 annuity, paying bonuses to all policyholders or otherwise
 369 abating their premiums in whole or in part out of surplus
 370 accumulated from nonparticipating insurance; provided that any
 371 such bonuses or abatement of premiums is fair and equitable to
 372 all policyholders and for the best interests of the company and
 373 its policyholders.

374 b. In the case of life insurance policies issued on the
 375 industrial debit plan, making allowance to policyholders who
 376 have continuously for a specified period made premium payments
 377 directly to an office of the insurer in an amount which fairly
 378 represents the saving in collection expenses.

379 c. Readjustment of the rate of premium for a group
 380 insurance policy based on the loss or expense thereunder, at the
 381 end of the first or any subsequent policy year of insurance
 382 thereunder, which may be made retroactive only for such policy
 383 year.

384 d. Issuance of life insurance policies or annuity
 385 contracts at rates less than the usual rates of premiums for
 386 such policies or contracts, as group insurance or employee
 387 insurance as defined in this code.

388 e. Issuing life or disability insurance policies on a
 389 salary savings, bank draft, preauthorized check, payroll
 390 deduction, or other similar plan at a reduced rate reasonably
 391 related to the savings made by the use of such plan.

392 3.a. No title insurer, or any member, employee, attorney,

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393 agent, or agency thereof, shall pay, allow, or give, or offer to
 394 pay, allow, or give, directly or indirectly, as inducement to
 395 title insurance, or after such insurance has been effected, any
 396 rebate or abatement of the premium or any other charge or fee,
 397 or provide any special favor or advantage, or any monetary
 398 consideration or inducement whatever.

399 b. Nothing in this subparagraph shall be construed as
 400 prohibiting the payment of fees to attorneys at law duly
 401 licensed to practice law in the courts of this state, for
 402 professional services, or as prohibiting the payment of earned
 403 portions of the premium to duly appointed agents or agencies who
 404 actually perform services for the title insurer. Nothing in this
 405 subparagraph shall be construed as prohibiting a rebate or
 406 abatement of an attorney's fee charged for professional
 407 services, or that portion of the premium that is not required to
 408 be retained by the insurer pursuant to s. 627.782(1), or any
 409 other agent charge or fee to the person responsible for paying
 410 the premium, charge, or fee.

411 c. No insured named in a policy, or any other person
 412 directly or indirectly connected with the transaction involving
 413 the issuance of such policy, including, but not limited to, any
 414 mortgage broker, real estate broker, builder, or attorney, any
 415 employee, agent, agency, or representative thereof, or any other
 416 person whatsoever, shall knowingly receive or accept, directly
 417 or indirectly, any rebate or abatement of any portion of the
 418 title insurance premium or of any other charge or fee or any
 419 monetary consideration or inducement whatsoever, except as set
 420 forth in sub-subparagraph b.; provided, in no event shall any

421 | portion of the attorney's fee, any portion of the premium that
 422 | is not required to be retained by the insurer pursuant to s.
 423 | 627.782(1), any agent charge or fee, or any other monetary
 424 | consideration or inducement be paid directly or indirectly for
 425 | the referral of title insurance business.

426 | 4. Providing a patronage dividend or other payment,
 427 | discount, or credit to a member of a production credit
 428 | association organized under 12 U.S.C.A. ss. 2071-2077 or a
 429 | federal land bank association organized under U.S.C.A. ss.2091-
 430 | 2098 constitutes an unlawful rebate if the dividend or other
 431 | payment, discount, or credit is directly or indirectly
 432 | calculated on the basis of the premium charged to that member
 433 | for crop hail or multiple-peril crop insurance.

434 | Section 10. Paragraph (b) of subsection (2) of section
 435 | 627.351, Florida Statutes, is amended to read:

436 | 627.351 Insurance risk apportionment plans.—

437 | (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

438 | (b) The department shall require all insurers holding a
 439 | certificate of authority to transact property insurance on a
 440 | direct basis in this state, other than joint underwriting
 441 | associations and other entities formed pursuant to this section,
 442 | to provide windstorm coverage to applicants from areas
 443 | determined to be eligible pursuant to paragraph (c) who in good
 444 | faith are entitled to, but are unable to procure, such coverage
 445 | through ordinary means; or it shall adopt a reasonable plan or
 446 | plans for the equitable apportionment or sharing among such
 447 | insurers of windstorm coverage, which may include formation of
 448 | an association for this purpose. As used in this subsection, the

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449 term "property insurance" means insurance on real or personal
450 property, as defined in s. 624.604, including insurance for
451 fire, industrial fire, allied lines, farmowners multiperil,
452 homeowners' multiperil, commercial multiperil, and mobile homes,
453 and including liability coverages on all such insurance, but
454 excluding inland marine as defined in s. 624.607(3) and
455 excluding vehicle insurance as defined in s. 624.605(1)(a) other
456 than insurance on mobile homes used as permanent dwellings. The
457 department shall adopt rules that provide a formula for the
458 recovery and repayment of any deferred assessments.

459 1. For the purpose of this section, properties eligible
460 for such windstorm coverage are defined as dwellings, buildings,
461 and other structures, including mobile homes which are used as
462 dwellings and which are tied down in compliance with mobile home
463 tie-down requirements prescribed by the Department of Highway
464 Safety and Motor Vehicles pursuant to s. 320.8325, and the
465 contents of all such properties. An applicant or policyholder is
466 eligible for coverage only if an offer of coverage cannot be
467 obtained by or for the applicant or policyholder from an
468 admitted insurer at approved rates.

469 2.a.(I) All insurers required to be members of such
470 association shall participate in its writings, expenses, and
471 losses. Surplus of the association shall be retained for the
472 payment of claims and shall not be distributed to the member
473 insurers. Such participation by member insurers shall be in the
474 proportion that the net direct premiums of each member insurer
475 written for property insurance in this state during the
476 preceding calendar year bear to the aggregate net direct

477 premiums for property insurance of all member insurers, as
 478 reduced by any credits for voluntary writings, in this state
 479 during the preceding calendar year. For the purposes of this
 480 subsection, the term "net direct premiums" means direct written
 481 premiums for property insurance, reduced by premium for
 482 liability coverage and for the following if included in allied
 483 lines: rain and hail on growing crops; livestock; association
 484 direct premiums booked; National Flood Insurance Program direct
 485 premiums; and similar deductions specifically authorized by the
 486 plan of operation and approved by the department. A member's
 487 participation shall begin on the first day of the calendar year
 488 following the year in which it is issued a certificate of
 489 authority to transact property insurance in the state and shall
 490 terminate 1 year after the end of the calendar year during which
 491 it no longer holds a certificate of authority to transact
 492 property insurance in the state. The commissioner, after review
 493 of annual statements, other reports, and any other statistics
 494 that the commissioner deems necessary, shall certify to the
 495 association the aggregate direct premiums written for property
 496 insurance in this state by all member insurers.

497 (II) Effective July 1, 2002, the association shall operate
 498 subject to the supervision and approval of a board of governors
 499 who are the same individuals that have been appointed by the
 500 Treasurer to serve on the board of governors of the Citizens
 501 Property Insurance Corporation.

502 (III) The plan of operation shall provide a formula
 503 whereby a company voluntarily providing windstorm coverage in
 504 affected areas will be relieved wholly or partially from

505 | apportionment of a regular assessment pursuant to sub-sub-
 506 | subparagraph d.(I) or sub-sub-subparagraph d.(II).

507 | (IV) A company which is a member of a group of companies
 508 | under common management may elect to have its credits applied on
 509 | a group basis, and any company or group may elect to have its
 510 | credits applied to any other company or group.

511 | (V) There shall be no credits or relief from apportionment
 512 | to a company for emergency assessments collected from its
 513 | policyholders under sub-sub-subparagraph d.(III).

514 | (VI) The plan of operation may also provide for the award
 515 | of credits, for a period not to exceed 3 years, from a regular
 516 | assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
 517 | subparagraph d.(II) as an incentive for taking policies out of
 518 | the Residential Property and Casualty Joint Underwriting
 519 | Association. In order to qualify for the exemption under this
 520 | sub-sub-subparagraph, the take-out plan must provide that at
 521 | least 40 percent of the policies removed from the Residential
 522 | Property and Casualty Joint Underwriting Association cover risks
 523 | located in Miami-Dade, Broward, and Palm Beach Counties or at
 524 | least 30 percent of the policies so removed cover risks located
 525 | in Miami-Dade, Broward, and Palm Beach Counties and an
 526 | additional 50 percent of the policies so removed cover risks
 527 | located in other coastal counties, and must also provide that no
 528 | more than 15 percent of the policies so removed may exclude
 529 | windstorm coverage. With the approval of the department, the
 530 | association may waive these geographic criteria for a take-out
 531 | plan that removes at least the lesser of 100,000 Residential
 532 | Property and Casualty Joint Underwriting Association policies or

533 | 15 percent of the total number of Residential Property and
 534 | Casualty Joint Underwriting Association policies, provided the
 535 | governing board of the Residential Property and Casualty Joint
 536 | Underwriting Association certifies that the take-out plan will
 537 | materially reduce the Residential Property and Casualty Joint
 538 | Underwriting Association's 100-year probable maximum loss from
 539 | hurricanes. With the approval of the department, the board may
 540 | extend such credits for an additional year if the insurer
 541 | guarantees an additional year of renewability for all policies
 542 | removed from the Residential Property and Casualty Joint
 543 | Underwriting Association, or for 2 additional years if the
 544 | insurer guarantees 2 additional years of renewability for all
 545 | policies removed from the Residential Property and Casualty
 546 | Joint Underwriting Association.

547 | b. Assessments to pay deficits in the association under
 548 | this subparagraph shall be included as an appropriate factor in
 549 | the making of rates as provided in s. 627.3512.

550 | c. The Legislature finds that the potential for unlimited
 551 | deficit assessments under this subparagraph may induce insurers
 552 | to attempt to reduce their writings in the voluntary market, and
 553 | that such actions would worsen the availability problems that
 554 | the association was created to remedy. It is the intent of the
 555 | Legislature that insurers remain fully responsible for paying
 556 | regular assessments and collecting emergency assessments for any
 557 | deficits of the association; however, it is also the intent of
 558 | the Legislature to provide a means by which assessment
 559 | liabilities may be amortized over a period of years.

560 | d.(I) When the deficit incurred in a particular calendar

561 | year is 10 percent or less of the aggregate statewide direct
 562 | written premium for property insurance for the prior calendar
 563 | year for all member insurers, the association shall levy an
 564 | assessment on member insurers in an amount equal to the deficit.

565 | (II) When the deficit incurred in a particular calendar
 566 | year exceeds 10 percent of the aggregate statewide direct
 567 | written premium for property insurance for the prior calendar
 568 | year for all member insurers, the association shall levy an
 569 | assessment on member insurers in an amount equal to the greater
 570 | of 10 percent of the deficit or 10 percent of the aggregate
 571 | statewide direct written premium for property insurance for the
 572 | prior calendar year for member insurers. Any remaining deficit
 573 | shall be recovered through emergency assessments under sub-sub-
 574 | subparagraph (III).

575 | (III) Upon a determination by the board of directors that
 576 | a deficit exceeds the amount that will be recovered through
 577 | regular assessments on member insurers, pursuant to sub-sub-
 578 | subparagraph (I) or sub-sub-subparagraph (II), the board shall
 579 | levy, after verification by the department, emergency
 580 | assessments to be collected by member insurers and by
 581 | underwriting associations created pursuant to this section which
 582 | write property insurance, upon issuance or renewal of property
 583 | insurance policies other than National Flood Insurance policies
 584 | in the year or years following levy of the regular assessments.
 585 | The amount of the emergency assessment collected in a particular
 586 | year shall be a uniform percentage of that year's direct written
 587 | premium for property insurance for all member insurers and
 588 | underwriting associations, excluding National Flood Insurance

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589 | policy premiums, as annually determined by the board and
 590 | verified by the department. The department shall verify the
 591 | arithmetic calculations involved in the board's determination
 592 | within 30 days after receipt of the information on which the
 593 | determination was based. Notwithstanding any other provision of
 594 | law, each member insurer and each underwriting association
 595 | created pursuant to this section shall collect emergency
 596 | assessments from its policyholders without such obligation being
 597 | affected by any credit, limitation, exemption, or deferment. The
 598 | emergency assessments so collected shall be transferred directly
 599 | to the association on a periodic basis as determined by the
 600 | association. The aggregate amount of emergency assessments
 601 | levied under this sub-sub-subparagraph in any calendar year may
 602 | not exceed the greater of 10 percent of the amount needed to
 603 | cover the original deficit, plus interest, fees, commissions,
 604 | required reserves, and other costs associated with financing of
 605 | the original deficit, or 10 percent of the aggregate statewide
 606 | direct written premium for property insurance written by member
 607 | insurers and underwriting associations for the prior year, plus
 608 | interest, fees, commissions, required reserves, and other costs
 609 | associated with financing the original deficit. The board may
 610 | pledge the proceeds of the emergency assessments under this sub-
 611 | sub-subparagraph as the source of revenue for bonds, to retire
 612 | any other debt incurred as a result of the deficit or events
 613 | giving rise to the deficit, or in any other way that the board
 614 | determines will efficiently recover the deficit. The emergency
 615 | assessments under this sub-sub-subparagraph shall continue as
 616 | long as any bonds issued or other indebtedness incurred with

617 | respect to a deficit for which the assessment was imposed remain
 618 | outstanding, unless adequate provision has been made for the
 619 | payment of such bonds or other indebtedness pursuant to the
 620 | document governing such bonds or other indebtedness. Emergency
 621 | assessments collected under this sub-sub-subparagraph are not
 622 | part of an insurer's rates, are not premium, and are not subject
 623 | to premium tax, fees, or commissions; however, failure to pay
 624 | the emergency assessment shall be treated as failure to pay
 625 | premium.

626 | (IV) Each member insurer's share of the total regular
 627 | assessments under sub-sub-subparagraph (I) or sub-sub-
 628 | subparagraph (II) shall be in the proportion that the insurer's
 629 | net direct premium for property insurance in this state, for the
 630 | year preceding the assessment bears to the aggregate statewide
 631 | net direct premium for property insurance of all member
 632 | insurers, as reduced by any credits for voluntary writings for
 633 | that year.

634 | (V) If regular deficit assessments are made under sub-sub-
 635 | subparagraph (I) or sub-sub-subparagraph (II), or by the
 636 | Residential Property and Casualty Joint Underwriting Association
 637 | under sub-subparagraph (6)(b)3.a. or sub-subparagraph
 638 | (6)(b)3.b., the association shall levy upon the association's
 639 | policyholders, as part of its next rate filing, or by a separate
 640 | rate filing solely for this purpose, a market equalization
 641 | surcharge in a percentage equal to the total amount of such
 642 | regular assessments divided by the aggregate statewide direct
 643 | written premium for property insurance for member insurers for
 644 | the prior calendar year. Market equalization surcharges under

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645 | this sub-sub-subparagraph are not considered premium and are not
 646 | subject to commissions, fees, or premium taxes; however, failure
 647 | to pay a market equalization surcharge shall be treated as
 648 | failure to pay premium.

649 | e. The governing body of any unit of local government, any
 650 | residents of which are insured under the plan, may issue bonds
 651 | as defined in s. 125.013 or s. 166.101 to fund an assistance
 652 | program, in conjunction with the association, for the purpose of
 653 | defraying deficits of the association. In order to avoid
 654 | needless and indiscriminate proliferation, duplication, and
 655 | fragmentation of such assistance programs, any unit of local
 656 | government, any residents of which are insured by the
 657 | association, may provide for the payment of losses, regardless
 658 | of whether or not the losses occurred within or outside of the
 659 | territorial jurisdiction of the local government. Revenue bonds
 660 | may not be issued until validated pursuant to chapter 75, unless
 661 | a state of emergency is declared by executive order or
 662 | proclamation of the Governor pursuant to s. 252.36 making such
 663 | findings as are necessary to determine that it is in the best
 664 | interests of, and necessary for, the protection of the public
 665 | health, safety, and general welfare of residents of this state
 666 | and the protection and preservation of the economic stability of
 667 | insurers operating in this state, and declaring it an essential
 668 | public purpose to permit certain municipalities or counties to
 669 | issue bonds as will provide relief to claimants and
 670 | policyholders of the association and insurers responsible for
 671 | apportionment of plan losses. Any such unit of local government
 672 | may enter into such contracts with the association and with any

673 | other entity created pursuant to this subsection as are
 674 | necessary to carry out this paragraph. Any bonds issued under
 675 | this sub-subparagraph shall be payable from and secured by
 676 | moneys received by the association from assessments under this
 677 | subparagraph, and assigned and pledged to or on behalf of the
 678 | unit of local government for the benefit of the holders of such
 679 | bonds. The funds, credit, property, and taxing power of the
 680 | state or of the unit of local government shall not be pledged
 681 | for the payment of such bonds. If any of the bonds remain unsold
 682 | 60 days after issuance, the department shall require all
 683 | insurers subject to assessment to purchase the bonds, which
 684 | shall be treated as admitted assets; each insurer shall be
 685 | required to purchase that percentage of the unsold portion of
 686 | the bond issue that equals the insurer's relative share of
 687 | assessment liability under this subsection. An insurer shall not
 688 | be required to purchase the bonds to the extent that the
 689 | department determines that the purchase would endanger or impair
 690 | the solvency of the insurer. The authority granted by this sub-
 691 | subparagraph is additional to any bonding authority granted by
 692 | subparagraph 6.

693 | 3. The plan shall also provide that any member with a
 694 | surplus as to policyholders of \$25 ~~\$20~~ million or less writing
 695 | 25 percent or more of its total countrywide property insurance
 696 | premiums in this state may petition the department, within the
 697 | first 90 days of each calendar year, to qualify as a limited
 698 | apportionment company. The apportionment of such a member
 699 | company in any calendar year for which it is qualified shall not
 700 | exceed its gross participation, which shall not be affected by

701 the formula for voluntary writings. In no event shall a limited
 702 apportionment company be required to participate in any
 703 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
 704 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
 705 \$50 million after payment of available plan funds in any
 706 calendar year. However, a limited apportionment company shall
 707 collect from its policyholders any emergency assessment imposed
 708 under sub-sub-subparagraph 2.d.(III). The plan shall provide
 709 that, if the department determines that any regular assessment
 710 will result in an impairment of the surplus of a limited
 711 apportionment company, the department may direct that all or
 712 part of such assessment be deferred. However, there shall be no
 713 limitation or deferment of an emergency assessment to be
 714 collected from policyholders under sub-sub-subparagraph
 715 2.d.(III).

716 4. The plan shall provide for the deferment, in whole or
 717 in part, of a regular assessment of a member insurer under sub-
 718 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
 719 not for an emergency assessment collected from policyholders
 720 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
 721 commissioner, payment of such regular assessment would endanger
 722 or impair the solvency of the member insurer. In the event a
 723 regular assessment against a member insurer is deferred in whole
 724 or in part, the amount by which such assessment is deferred may
 725 be assessed against the other member insurers in a manner
 726 consistent with the basis for assessments set forth in sub-sub-
 727 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

728 5.a. The plan of operation may include deductibles and

729 rules for classification of risks and rate modifications
 730 consistent with the objective of providing and maintaining funds
 731 sufficient to pay catastrophe losses.

732 b. It is the intent of the Legislature that the rates for
 733 coverage provided by the association be actuarially sound and
 734 not competitive with approved rates charged in the admitted
 735 voluntary market such that the association functions as a
 736 residual market mechanism to provide insurance only when the
 737 insurance cannot be procured in the voluntary market. The plan
 738 of operation shall provide a mechanism to assure that, beginning
 739 no later than January 1, 1999, the rates charged by the
 740 association for each line of business are reflective of approved
 741 rates in the voluntary market for hurricane coverage for each
 742 line of business in the various areas eligible for association
 743 coverage.

744 c. The association shall provide for windstorm coverage on
 745 residential properties in limits up to \$10 million for
 746 commercial lines residential risks and up to \$1 million for
 747 personal lines residential risks. If coverage with the
 748 association is sought for a residential risk valued in excess of
 749 these limits, coverage shall be available to the risk up to the
 750 replacement cost or actual cash value of the property, at the
 751 option of the insured, if coverage for the risk cannot be
 752 located in the authorized market. The association must accept a
 753 commercial lines residential risk with limits above \$10 million
 754 or a personal lines residential risk with limits above \$1
 755 million if coverage is not available in the authorized market.
 756 The association may write coverage above the limits specified in

757 | this subparagraph with or without facultative or other
 758 | reinsurance coverage, as the association determines appropriate.

759 | d. The plan of operation must provide objective criteria
 760 | and procedures, approved by the department, to be uniformly
 761 | applied for all applicants in determining whether an individual
 762 | risk is so hazardous as to be uninsurable. In making this
 763 | determination and in establishing the criteria and procedures,
 764 | the following shall be considered:

765 | (I) Whether the likelihood of a loss for the individual
 766 | risk is substantially higher than for other risks of the same
 767 | class; and

768 | (II) Whether the uncertainty associated with the
 769 | individual risk is such that an appropriate premium cannot be
 770 | determined.

771 |
 772 | The acceptance or rejection of a risk by the association
 773 | pursuant to such criteria and procedures must be construed as
 774 | the private placement of insurance, and the provisions of
 775 | chapter 120 do not apply.

776 | e. If the risk accepts an offer of coverage through the
 777 | market assistance program or through a mechanism established by
 778 | the association, either before the policy is issued by the
 779 | association or during the first 30 days of coverage by the
 780 | association, and the producing agent who submitted the
 781 | application to the association is not currently appointed by the
 782 | insurer, the insurer shall:

783 | (I) Pay to the producing agent of record of the policy,
 784 | for the first year, an amount that is the greater of the

785 insurer's usual and customary commission for the type of policy
 786 written or a fee equal to the usual and customary commission of
 787 the association; or

788 (II) Offer to allow the producing agent of record of the
 789 policy to continue servicing the policy for a period of not less
 790 than 1 year and offer to pay the agent the greater of the
 791 insurer's or the association's usual and customary commission
 792 for the type of policy written.

793

794 If the producing agent is unwilling or unable to accept
 795 appointment, the new insurer shall pay the agent in accordance
 796 with sub-sub-subparagraph (I). Subject to the provisions of s.
 797 627.3517, the policies issued by the association must provide
 798 that if the association obtains an offer from an authorized
 799 insurer to cover the risk at its approved rates under either a
 800 standard policy including wind coverage or, if consistent with
 801 the insurer's underwriting rules as filed with the department, a
 802 basic policy including wind coverage, the risk is no longer
 803 eligible for coverage through the association. Upon termination
 804 of eligibility, the association shall provide written notice to
 805 the policyholder and agent of record stating that the
 806 association policy must be canceled as of 60 days after the date
 807 of the notice because of the offer of coverage from an
 808 authorized insurer. Other provisions of the insurance code
 809 relating to cancellation and notice of cancellation do not apply
 810 to actions under this sub-subparagraph.

811 f. When the association enters into a contractual
 812 agreement for a take-out plan, the producing agent of record of

813 the association policy is entitled to retain any unearned
 814 commission on the policy, and the insurer shall:

815 (I) Pay to the producing agent of record of the
 816 association policy, for the first year, an amount that is the
 817 greater of the insurer's usual and customary commission for the
 818 type of policy written or a fee equal to the usual and customary
 819 commission of the association; or

820 (II) Offer to allow the producing agent of record of the
 821 association policy to continue servicing the policy for a period
 822 of not less than 1 year and offer to pay the agent the greater
 823 of the insurer's or the association's usual and customary
 824 commission for the type of policy written.

825
 826 If the producing agent is unwilling or unable to accept
 827 appointment, the new insurer shall pay the agent in accordance
 828 with sub-sub-subparagraph (I).

829 6.a. The plan of operation may authorize the formation of
 830 a private nonprofit corporation, a private nonprofit
 831 unincorporated association, a partnership, a trust, a limited
 832 liability company, or a nonprofit mutual company which may be
 833 empowered, among other things, to borrow money by issuing bonds
 834 or by incurring other indebtedness and to accumulate reserves or
 835 funds to be used for the payment of insured catastrophe losses.
 836 The plan may authorize all actions necessary to facilitate the
 837 issuance of bonds, including the pledging of assessments or
 838 other revenues.

839 b. Any entity created under this subsection, or any entity
 840 formed for the purposes of this subsection, may sue and be sued,

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841 | may borrow money; issue bonds, notes, or debt instruments;
 842 | pledge or sell assessments, market equalization surcharges and
 843 | other surcharges, rights, premiums, contractual rights,
 844 | projected recoveries from the Florida Hurricane Catastrophe
 845 | Fund, other reinsurance recoverables, and other assets as
 846 | security for such bonds, notes, or debt instruments; enter into
 847 | any contracts or agreements necessary or proper to accomplish
 848 | such borrowings; and take other actions necessary to carry out
 849 | the purposes of this subsection. The association may issue bonds
 850 | or incur other indebtedness, or have bonds issued on its behalf
 851 | by a unit of local government pursuant to subparagraph (6)(q)2.,
 852 | in the absence of a hurricane or other weather-related event,
 853 | upon a determination by the association subject to approval by
 854 | the department that such action would enable it to efficiently
 855 | meet the financial obligations of the association and that such
 856 | financings are reasonably necessary to effectuate the
 857 | requirements of this subsection. Any such entity may accumulate
 858 | reserves and retain surpluses as of the end of any association
 859 | year to provide for the payment of losses incurred by the
 860 | association during that year or any future year. The association
 861 | shall incorporate and continue the plan of operation and
 862 | articles of agreement in effect on the effective date of chapter
 863 | 76-96, Laws of Florida, to the extent that it is not
 864 | inconsistent with chapter 76-96, and as subsequently modified
 865 | consistent with chapter 76-96. The board of directors and
 866 | officers currently serving shall continue to serve until their
 867 | successors are duly qualified as provided under the plan. The
 868 | assets and obligations of the plan in effect immediately prior

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869 | to the effective date of chapter 76-96 shall be construed to be
 870 | the assets and obligations of the successor plan created herein.

871 | c. In recognition of s. 10, Art. I of the State
 872 | Constitution, prohibiting the impairment of obligations of
 873 | contracts, it is the intent of the Legislature that no action be
 874 | taken whose purpose is to impair any bond indenture or financing
 875 | agreement or any revenue source committed by contract to such
 876 | bond or other indebtedness issued or incurred by the association
 877 | or any other entity created under this subsection.

878 | 7. On such coverage, an agent's remuneration shall be that
 879 | amount of money payable to the agent by the terms of his or her
 880 | contract with the company with which the business is placed.
 881 | However, no commission will be paid on that portion of the
 882 | premium which is in excess of the standard premium of that
 883 | company.

884 | 8. Subject to approval by the department, the association
 885 | may establish different eligibility requirements and operational
 886 | procedures for any line or type of coverage for any specified
 887 | eligible area or portion of an eligible area if the board
 888 | determines that such changes to the eligibility requirements and
 889 | operational procedures are justified due to the voluntary market
 890 | being sufficiently stable and competitive in such area or for
 891 | such line or type of coverage and that consumers who, in good
 892 | faith, are unable to obtain insurance through the voluntary
 893 | market through ordinary methods would continue to have access to
 894 | coverage from the association. When coverage is sought in
 895 | connection with a real property transfer, such requirements and
 896 | procedures shall not provide for an effective date of coverage

897 later than the date of the closing of the transfer as
 898 established by the transferor, the transferee, and, if
 899 applicable, the lender.

900 9. Notwithstanding any other provision of law:

901 a. The pledge or sale of, the lien upon, and the security
 902 interest in any rights, revenues, or other assets of the
 903 association created or purported to be created pursuant to any
 904 financing documents to secure any bonds or other indebtedness of
 905 the association shall be and remain valid and enforceable,
 906 notwithstanding the commencement of and during the continuation
 907 of, and after, any rehabilitation, insolvency, liquidation,
 908 bankruptcy, receivership, conservatorship, reorganization, or
 909 similar proceeding against the association under the laws of
 910 this state or any other applicable laws.

911 b. No such proceeding shall relieve the association of its
 912 obligation, or otherwise affect its ability to perform its
 913 obligation, to continue to collect, or levy and collect,
 914 assessments, market equalization or other surcharges, projected
 915 recoveries from the Florida Hurricane Catastrophe Fund,
 916 reinsurance recoverables, or any other rights, revenues, or
 917 other assets of the association pledged.

918 c. Each such pledge or sale of, lien upon, and security
 919 interest in, including the priority of such pledge, lien, or
 920 security interest, any such assessments, emergency assessments,
 921 market equalization or renewal surcharges, projected recoveries
 922 from the Florida Hurricane Catastrophe Fund, reinsurance
 923 recoverables, or other rights, revenues, or other assets which
 924 are collected, or levied and collected, after the commencement

925 of and during the pendency of or after any such proceeding shall
 926 continue unaffected by such proceeding.

927 d. As used in this subsection, the term "financing
 928 documents" means any agreement, instrument, or other document
 929 now existing or hereafter created evidencing any bonds or other
 930 indebtedness of the association or pursuant to which any such
 931 bonds or other indebtedness has been or may be issued and
 932 pursuant to which any rights, revenues, or other assets of the
 933 association are pledged or sold to secure the repayment of such
 934 bonds or indebtedness, together with the payment of interest on
 935 such bonds or such indebtedness, or the payment of any other
 936 obligation of the association related to such bonds or
 937 indebtedness.

938 e. Any such pledge or sale of assessments, revenues,
 939 contract rights or other rights or assets of the association
 940 shall constitute a lien and security interest, or sale, as the
 941 case may be, that is immediately effective and attaches to such
 942 assessments, revenues, contract, or other rights or assets,
 943 whether or not imposed or collected at the time the pledge or
 944 sale is made. Any such pledge or sale is effective, valid,
 945 binding, and enforceable against the association or other entity
 946 making such pledge or sale, and valid and binding against and
 947 superior to any competing claims or obligations owed to any
 948 other person or entity, including policyholders in this state,
 949 asserting rights in any such assessments, revenues, contract, or
 950 other rights or assets to the extent set forth in and in
 951 accordance with the terms of the pledge or sale contained in the
 952 applicable financing documents, whether or not any such person

953 or entity has notice of such pledge or sale and without the need
 954 for any physical delivery, recordation, filing, or other action.

955 f. There shall be no liability on the part of, and no
 956 cause of action of any nature shall arise against, any member
 957 insurer or its agents or employees, agents or employees of the
 958 association, members of the board of directors of the
 959 association, or the department or its representatives, for any
 960 action taken by them in the performance of their duties or
 961 responsibilities under this subsection. Such immunity does not
 962 apply to actions for breach of any contract or agreement
 963 pertaining to insurance, or any willful tort.

964 Section 11. Subsection (2) of section 627.43141, Florida
 965 Statutes, is amended to read:

966 627.43141 Notice of change in policy terms.—

967 (2) Notwithstanding any other provision of law, a renewal
 968 policy may contain a change in policy terms. If a renewal policy
 969 contains ~~does contain~~ such change, the insurer must give the
 970 named insured written notice of the change, which must be
 971 enclosed along with the written notice of renewal premium
 972 required under ~~by~~ ss. 627.4133 and 627.728. Such notice shall be
 973 entitled "Notice of Change in Policy Terms."

974 Section 12. Subsections (1), (2), (7), and (9) of section
 975 627.7015, Florida Statutes, are amended to read:

976 627.7015 Alternative procedure for resolution of disputed
 977 property insurance claims.—

978 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a
 979 nonadversarial alternative dispute resolution procedure for a
 980 mediated claim resolution conference prompted by the need for

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981 effective, fair, and timely handling of property insurance
 982 claims. There is a particular need for an informal,
 983 nonthreatening forum for helping parties who elect this
 984 procedure to resolve their claims disputes because most
 985 homeowner's and commercial residential insurance policies
 986 obligate policyholders ~~insureds~~ to participate in a potentially
 987 expensive and time-consuming adversarial appraisal process
 988 before ~~prior to~~ litigation. The procedure set forth in this
 989 section is designed to bring the parties together for a mediated
 990 claims settlement conference without any of the trappings or
 991 drawbacks of an adversarial process. Before resorting to these
 992 procedures, policyholders ~~insureds~~ and insurers are encouraged
 993 to resolve claims as quickly and fairly as possible. This
 994 section is available with respect to claims under personal lines
 995 and commercial residential policies before ~~for all claimants and~~
 996 ~~insurers prior to~~ commencing the appraisal process, or before
 997 commencing litigation. Mediation may be requested only by the
 998 policyholder, as a first-party claimant, or the insurer. If
 999 requested by the policyholder ~~insured~~, participation by legal
 1000 counsel ~~is shall be~~ permitted. Mediation under this section is
 1001 also available to litigants referred to the department by a
 1002 county court or circuit court. This section does not apply to
 1003 commercial coverages, to private passenger motor vehicle
 1004 insurance coverages, or to disputes relating to liability
 1005 coverages in policies of property insurance.

1006 (2) At the time a first-party claim within the scope of
 1007 this section is filed by the policyholder, the insurer shall
 1008 notify the policyholder ~~all first-party claimants~~ of its ~~their~~

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1009 right to participate in the mediation program under this
 1010 section. The department shall prepare a consumer information
 1011 pamphlet for distribution to persons participating in mediation
 1012 ~~under this section.~~

1013 (7) If the insurer fails to comply with subsection (2) by
 1014 failing to notify a policyholder ~~first party claimant~~ of its
 1015 right to participate in the mediation program under this section
 1016 or if the insurer requests the mediation, and the mediation
 1017 results are rejected by either party, the policyholder is
 1018 ~~insured shall~~ not be required to submit to or participate in any
 1019 contractual loss appraisal process of the property loss damage
 1020 as a precondition to legal action for breach of contract against
 1021 the insurer for its failure to pay the policyholder's claims
 1022 covered by the policy.

1023 (9) For purposes of this section, the term "claim" refers
 1024 to any dispute between an insurer and a policyholder ~~an insured~~
 1025 relating to a material issue of fact other than a dispute:

1026 (a) With respect to which the insurer has a reasonable
 1027 basis to suspect fraud;

1028 (b) Where, based on agreed-upon facts as to the cause of
 1029 loss, there is no coverage under the policy;

1030 (c) With respect to which the insurer has a reasonable
 1031 basis to believe that the policyholder ~~claimant~~ has
 1032 intentionally made a material misrepresentation of fact which is
 1033 relevant to the claim, and the entire request for payment of a
 1034 loss has been denied on the basis of the material
 1035 misrepresentation; ~~or~~

1036 (d) With respect to which the amount in controversy is

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1037 less than \$500, unless the parties agree to mediate a dispute
 1038 involving a lesser amount; ~~or-~~

1039 (e) Where the notice of loss is reported to the insurer
 1040 more than 36 months after the declaration of a state of
 1041 emergency by the Governor in response to a hurricane that makes
 1042 landfall in this state.

1043 Section 13. Effective upon becoming a law, subsection (4)
 1044 of section 627.7295, Florida Statutes, is amended to read:

1045 627.7295 Motor vehicle insurance contracts.-

1046 (4) ~~If subsection (7) does not apply,~~ The insurer may
 1047 cancel the policy in accordance with this code except that,
 1048 notwithstanding s. 627.728, an insurer may not cancel a new
 1049 policy or binder during the first 60 days immediately following
 1050 the effective date of the policy or binder ~~except~~ for nonpayment
 1051 of premium unless the reason for the cancellation is the
 1052 issuance of a check for the premium that is dishonored for any
 1053 reason or any other type of premium payment that was
 1054 subsequently determined to be rejected or invalid.

1055 Section 14. Effective upon becoming a law, paragraph (d)
 1056 of subsection (4) of section 627.736, Florida Statutes, is
 1057 amended to read:

1058 627.736 Required personal injury protection benefits;
 1059 exclusions; priority; claims.-

1060 (4) BENEFITS; WHEN DUE.-Benefits due from an insurer under
 1061 ss. 627.730-627.7405 shall be primary, except that benefits
 1062 received under any workers' compensation law shall be credited
 1063 against the benefits provided by subsection (1) and shall be due
 1064 and payable as loss accrues, upon receipt of reasonable proof of

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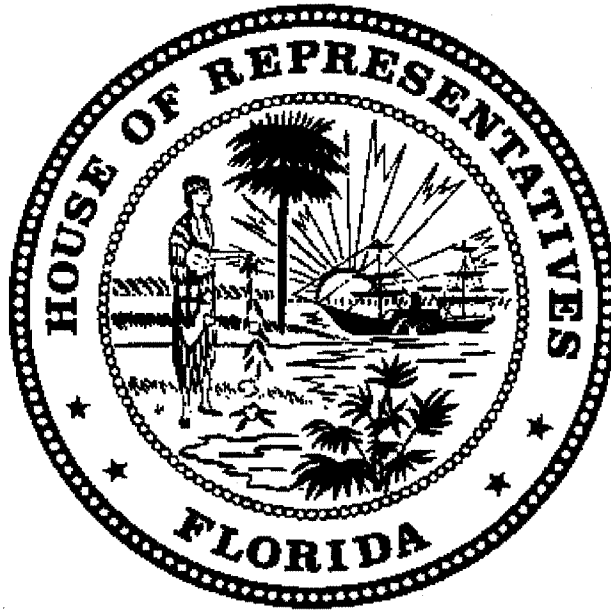
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1065 such loss and the amount of expenses and loss incurred which are
 1066 covered by the policy issued under ss. 627.730-627.7405. When
 1067 the Agency for Health Care Administration provides, pays, or
 1068 becomes liable for medical assistance under the Medicaid program
 1069 related to injury, sickness, disease, or death arising out of
 1070 the ownership, maintenance, or use of a motor vehicle, benefits
 1071 under ss. 627.730-627.7405 shall be subject to the provisions of
 1072 the Medicaid program.

1073 (d) All overdue payments shall bear simple interest at the
 1074 rate established under s. 55.03 or the rate established in the
 1075 insurance contract, whichever is greater, for the quarter year
 1076 in which the payment became overdue, calculated from the date
 1077 the insurer was furnished with written notice of the amount of
 1078 covered loss. Interest shall be due at the time payment of the
 1079 overdue claim is made.

1080 Section 15. Except as otherwise provided in this act, this
 1081 act shall take effect July 1, 2012.



Insurance & Banking Subcommittee

**Tuesday, January 24, 2012
2:00 P.M.
404 HOB**

AMENDMENT PACKET

**Dean Cannon
Speaker**

**Bryan Nelson
Chair**

INSURANCE & BANKING SUBCOMMITTEE

**HB 613 by Representatives Bernard and Corcoran
Financial Institutions**

AMENDMENT SUMMARY

January 24, 2012

Amendment 1 by Rep. Bernard (Lines 94-103):

- A technical amendment reflecting that rules are to be established by the Financial Services Commission rather than the Office of Financial Regulation.

Amendment 2 by Rep. Bernard (Lines 113-120):

- Corrects a cross-reference.
- Changes the online location of the annual report created by the OFR to be the OFR's website rather than the CFO's website.
- Changes the penalty for noncompliance with a reporting requirement to an administrative fine rather than a civil penalty.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Bernard offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 94-103 and insert:

7 (3) By July 1, 2012, the Financial Services Commission
8 shall adopt rules establishing minimum standards for due
9 diligence policies, procedures, and controls required by this
10 section.

11 (4) By January 1, 2013, and each January 1 thereafter,
12 each financial institution chartered in this state must certify
13 to the Office of Financial Regulation that the financial
14 institution has adopted and substantially complies with its due
15 diligence policies, procedures, and controls required by this
16 section and the rules adopted under this section, and

17
18 -----
19 **T I T L E A M E N D M E N T**

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 613 (2012)

Amendment No.

20 Remove lines 13-20 and insert:
21 the Financial Services Commission to adopt rules establishing
22 minimum standards for the due diligence policies, procedures,
23 and controls; requiring a financial institution chartered in
24 this state to annually file a compliance certificate with the
25 Office of Financial Regulation; requiring the Office of
26 Financial Regulation to submit an annual report relating to the
27 Financial Services Commission rules and certifications from
28

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 613 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Bernard offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 113-120 and insert:
7 required under subsection (3) and the status of the
8 certifications of compliance received from the financial
9 institutions chartered in this state.

10 (6) The Office of Financial Regulation shall make its
11 annual compliance report under this section available on its
12 website.

13 (7) The Office of Financial Regulation may impose an
14 administrative fine, not to exceed \$100,000 per occurrence,
15 against a

16
17 -----
18 **T I T L E A M E N D M E N T**

19 Remove lines 23-26 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 613 (2012)

Amendment No.

20 Representatives; requiring the Office of Financial Regulation to
21 make the annual report available to the public on its website;
22 authorizing the Office of Financial Regulation to impose an
23 administrative fine

24

INSURANCE & BANKING SUBCOMMITTEE

**HB 789 by Rep. O'Toole
Workers' Compensation**

**AMENDMENT SUMMARY
January 24, 2012**

Amendment 1 by Rep. O'Toole (Line 17). The amendment increases the penalty multiplier used to calculate fines in workers' compensation based on the length of time an employer has been in violation of coverage requirements.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee
 3 Representative O'Toole offered the following:

Amendment

Remove lines 17-22 and insert:

7 this chapter a penalty equal to 1.5, 1.75, or 2 times the amount
 8 the employer would have paid in premium when applying approved
 9 manual rates to the employer's payroll during periods for which
 10 it failed to secure the payment of workers' compensation
 11 required by this chapter within the preceding 1-year ~~3-year~~
 12 period or \$1,000, whichever is greater, as follows: for
 13 employers in violation of coverage requirements for less than 30
 14 days in total, 1.5 times such amount; for employers in violation
 15 of coverage requirements for at least 30 days but less than 1
 16 year in total, 1.75 times such amount; for employers in
 17 violation of coverage requirements for 1 year in total, 2 times
 18 such amount.

INSURANCE & BANKING SUBCOMMITTEE

**PCS for HB 1101 by Rep. Horner
Insurance**

**AMENDMENT SUMMARY
January 24, 2012**

Amendment 1 by Rep. Horner (Lines 964-973): Places the bill's provision clarifying a "Notice of Change in Policy Terms" can be used to remove sinkhole coverage from a base property insurance policy into a different section of law. This Notice is provided to the homeowner with the notice of renewal premium.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCS: Insurance & Banking
2 Subcommittee
3 Representative Horner offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 964-973 and insert:

7 Section 11. Subsection (4) of section 627.706, Florida
8 Statutes, is amended to read:

9 627.706 Sinkhole insurance; catastrophic ground cover
10 collapse; definitions.—

11 (4) An insurer offering sinkhole coverage to policyholders
12 before or after the adoption of s. 30, chapter 2007-1, Laws of
13 Florida, may renew pursuant to s. 627.43141 or nonrenew the
14 policies of policyholders maintaining sinkhole coverage, at the
15 option of the insurer, and provide an offer of coverage or
16 renewal that includes catastrophic ground cover collapse and
17 excludes sinkhole coverage. Insurers acting in accordance with
18 this subsection are subject to the following requirements:

Amendment No.

19 (a) Policyholders must be notified that the a renewal or
20 nonrenewal is for purposes of removing sinkhole coverage, and
21 that the policyholder is being offered a policy that provides
22 coverage for catastrophic ground cover collapse.

23 (b) Policyholders must be provided an actuarially
24 reasonable premium credit or discount for the removal of
25 sinkhole coverage and provision of only catastrophic ground
26 cover collapse.

27 (c) Subject to the provisions of this subsection and the
28 insurer's approved underwriting or insurability guidelines, the
29 insurer shall provide each policyholder with the opportunity to
30 purchase an endorsement to his or her policy providing sinkhole
31 coverage and may require an inspection of the property before
32 issuance of a sinkhole coverage endorsement.

33 (d) Section 624.4305 does not apply to nonrenewal notices
34 issued pursuant to this subsection.

35
36
37 -----
38 **T I T L E A M E N D M E N T**

39 Remove lines 43-45 and insert:

40 apportionment company; amending s. 627.706, F.S.; providing for
41 renewal of property insurance policies; amending s. 627.7015,
42 F.S.;